

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 302 OF 2021**

(Arising from the decision of Ifakara District Land & Housing Tribunal in Land Appeal No. 136 of 2017)

**ANGELUISYE MWAKALINGA.....APPLICANT**

**VERSUS**

**KASSIMU LIBENANGA.....RESPONDENT**

Date of Last Order: 10.12.2021  
Date of Ruling: 28.01.2022

**RULING**

**V. L. MAKANI, J**

The applicant is seeking for the following orders *inter partes*:

- I. That this honourable court be pleased to make a finding that sufficient grounds exist to grant extension of time.*
- II. That his honourable court be pleased to grant extension of time to file an appeal.*
- III. Costs be maintained.*
- IV. Any other order as the honourable court may deem just to issue.*

The application is made under section 14(1) of the Law of Limitation Act CAP 89 RE 2019, Order XLIII Rule 2 and section 95 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). The application is also

supported by the affidavit of the applicant herein. The respondent has opposed the application by filing a counter-affidavit.

With leave of the court the application was argued by way of written submissions. Submissions on behalf of the applicant were drawn and filed by Mr. Omega Emmanuel Juael, Advocate. On the other hand the respondent personally filed his submissions in reply.

Submitting in support of the application Mr. Juael said that the application is for extension of time to file application for setting aside the dismissal order emanating from Misc. Land Case Appeal No. 57 of 2010 dated 18/11/2020 (Hon. Maghimbi, J). he said the applicant instructed one Thabit Kapaulana who introduced himself as an advocate. He said the applicant believed him until when he was informed that his application has been dismissed for want of prosecution though at all times he was communicating with the said Thabit Kapaulana although the record show that Thabit Kapaulana appeared to report of the absence of the applicant. He said this was not the negligence of the applicant nor his intention to abandon his case since he paid for legal representation to the person who introduced himself as an advocate.

Mr. Juael said ignorance of the law or negligence of an advocate is not sufficient to warrant extension of time, however, in this incidence a person impersonated himself as an advocate and that the applicant had no information due to the surrounding environment and information supplied. In that respect the applicant believed that he was duly represented according to the updates that were sent to him by the said Thabit Kapaulana. Counsel stressed that there was misrepresentation and misinformation which contributed to non appearance and thereafter dismissal of the application to set aside the dismissal order in time. He said the fact that the applicant engaged a person who is not an advocate is sufficient reason for grant of extension of time.

Mr Juael further pointed out that after knowledge that the appeal has been dismissed, the applicant immediately filed this application without delay and acted promptly. He relied on the case of **Tamali Jilo Mwampyate vs. Fakihi Mohamed Ausi, Misc. Land Application No. 07 of 2020 (HC-Mbeya)**(unreported). He thus prayed for the court to grant extension of time within which the applicant can file an application to set aside the dismissal order.

In reply the respondent said sufficient cause is a factor under section 38(1) of the Land Disputes Courts Act, 2002 for sufficient cause. He said this was reinstated in the case of **Shant vs. Shi Ndocha & Others (1973) EA 207**. The respondent said the applicant filed Land Appeal No. 57 of 2019 which was dismissed on 18/11/2020 for want of prosecution. This application for extension of time has been filed on 24/06/2021 which is almost 208 days. He said the applicant has not explained in his affidavit or the submissions why it took him 208 days to file this application. The respondent relied on the case of **Yazidi Kassim Mbakileki vs. CRDB (1996) Limited Bukoba Branch & Another, Civil Application No. 412/04 of 2018** where it was stated that promptness to take action is one of the considerations for granting extension of time. He concluded by stating that the application is devoid of merit.

In rejoinder, Mr. Juael reiterated what he submitted in chief, and further said that the applicant did not have knowledge of the dismissal of his appeal on 18/11/2020 otherwise he would have acted on time as he did with this application. He emphasized that the delay was not occasioned by the applicant. He prayed for the application to be granted so that he could pursue his right on appeal.

Having gone through the chamber summons, affidavits and submissions by the parties herein, the main issue for consideration is whether the applicant has advanced sufficient reasons to warrant this court to grant extension of time.

It is well settled law that for the court to exercise its discretionary power in extending time good cause for the delay must be shown by the applicant. What amounts to good cause has not been defined but it all depends on the nature and circumstances of each case. The applicant must demonstrate by affidavit that he or she was prevented by sufficient cause from pursuing the intended action within the time limit and is obliged to account for every single day of the delay (see the case of **Lyamuya Construction Company Limited vs. The Board of the Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT)** (unreported)).

In the present case the main reason for the delay is that the applicant was led to believe that one Thabit Kapaulana was an advocate, and he was representing him and it was not until June 2021 when he

discovered that Thabit Kapaulana was not an advocate and that there was a dismissal order in respect of the appeal that he filed.

This reason does not sound very convincing, though it draws a lot of sympathy. The applicant said he paid TZS 6,000,000/= as legal fees (paragraph 3 of the affidavit) but there is no receipt showing that the applicant paid the said amount. He has not even specified the location of the office of the said Thabit Kapaulana. The applicant in paragraph 5 of the affidavit said he became aware that the appeal was dismissed when he was served with summons to show cause why execution should not proceed against him, but the said summons is not annexed to the affidavit to support this allegation. It also raises eyebrows why the applicant became aware of the dismissal order on unspecified date in June, 2021 while on 18/11/2020 when the appeal was dismissed, **Aron Tipa** his neighbour was present in court. It was expected that the said **Aron Tipa** would have relayed this information to him as he was the one who reported his sickness in court or otherwise Aron Tipa would have sworn an affidavit to state what transpired in court on the date of the dismissal of the application. The applicant also said he reported the matter to the police (paragraph 7 of the affidavit) but the copy of the RB does not show the names or date, so it is not

certain if the applicant actually reported the matter to the police and if the RB is in respect of the said Thabit Kapaulana. Further, the story that he had engaged Thabit Kapaulana is questionable because different people appeared on his behalf and gave various excuses for his absence. In that regard it cannot be stated with certainty that Thabit Kapaulana was the one engaged because the record does not show that he consistently made appearance on behalf of the applicant.

In view of the above observations, and as correctly stated by the respondent, the applicant has failed to account for the days from when the matter was dismissed to when this application was filed. The facts in the affidavit and the submissions do not support the allegation that the applicant was unaware of the dismissal of the appeal; and in the absence of such facts, it is apparent that applicant has failed to account for each day of the delay. From 18/11/2020 when the appeal was dismissed to 24/06/2021 when this application was filed is about 220 days and this is an inordinate delay which has not been accounted for, therefore the court cannot grant extension of time (see **Lyamuya construction** (supra)).

For the reasons I have endeavoured to demonstrate hereinabove, the applicant has failed to account for the delay and the reasons given are not sufficient to warrant the court to exercise its discretionary powers to grant extension of time. Consequently, the application is dismissed with costs for want of merit.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**28/01/2021**

