

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 50 OF 2023**

*(Originated from the decision of the Kibaha District Land and Housing Tribunal, Land Appeal No. 161 of 2020)*

**SHABANI MRISHO DILUNGA .....APPLICANT**

**VERSUS**

**RAJABU SAIDI MGONANZE .....1<sup>ST</sup> RESPONDENT**

**SELEMANI MELI .....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 17/07/2023*  
*Date of Ruling: 25/07/2023*

**K. D. MHINA, J.**

This is an application for an extension of time within which the applicant herein can lodge an appeal to this Court against the decision of the District Land and Housing Tribunal ("the DLHT") for Kibaha in Land Appeal No. 161 of 2020. The application has been preferred under Section 38 (1) of the Land Disputes' Courts Act No.2, Cap 216 R: E 2019 ("the LDCA"), section 14(1) of The Law of Limitation Act, Cap 89 R: E 2019

The chamber summons is supported by the applicant's affidavit, which expounds the grounds for the application.

What prompted the filing of this application can be briefly narrated as follows. It started at the Ward Tribunal of Mlandizi in Application No. 156 of 2020, where the applicant was declared the lawful owner of the disputed land.

The respondent, being aggrieved by the said decision, appealed to Kibaha District Land and Housing Tribunal vide Land Appeal No.161 of 2020, whereby on 10 June 2022, the DLHT overturned the WT decision and declared the respondents as lawful owners of the disputed land.

Undaunted, the applicant approached this Court by appeal vide Land Appeal No. 52 of 2022. On 23 November 2022, the appeal was struck out for being incompetent before this Court. Hence this application.

The application was argued by way of written submissions. The applicant was represented by Ms. Nasra Mashaura, a Learned Counsel, while the respondents were by Mr. Jacob F. Mgassa, also a learned counsel.

Briefly, submitting in support of the application, Ms. Mashaura argued that initially, the applicant filed an appeal to this court vide Land Appeal No. 52/2022, and the same was struck out for being time-barred.

She further submitted that the struck-out appeal was supposed to be lodged within 60 days from the day of the DLHT decision on 10 June 2022, whereby the deadline was 9 August 2022. She explained that the one-day delay was not intentional, but it was due to a network problem at the DLHT, which caused the failure to issue the control number for the payment of filing fees. That problem was not solved that day problem was not solved whereby the court clerk Safi Mathias Hape, instructed the Applicant to leave the Appeal documents with her so that she could process the control number when the said technical problem was resolved. Therefore, she submitted that nothing could prevent the Applicant from filing the said appeal on time if there was no technical problem. She bolsters her submission by citing **Nuru Emmanuel Mpimbi vs. The Republic**, Misc. Criminal Application No. 39/2021 (HC-Dodoma), whereby an application for an extension of time to file an appeal due to a technical delay, was granted.

In addition, she submitted that the Applicant took all the necessary steps and acted diligently to access the justice system on time after

discovering that the appeal was filed out of time, even this application for an extension of time was acted immediately though due to some faults, on the part of the court to provide the copy of the ruling and the health problems of the Applicants caused a delay for few days. The ruling of this court, which struck out the appeal, was delivered on 23 November 2022, while the copy of the ruling was ready for collection on 15 December 2022.

She concluded by submitting that the applicant was a very old man with deteriorated healthy condition. He attended a clinic for one week and later was under medical attention and bed rest for six weeks until he filed this application for an extension of time after his recovery on 7 February 2023.

In response, Mr. Mgassa submitted that this application was filed on 07 February 2023, seven months and twenty-eight days from the date of the judgement of the DLHT for Kibaha.

He flatly disagreed with the reasons advanced by the Applicant because of the failure to account for each day of delay. He stated that the alleged technical reason was occasioned on 9 August 2022; however, the Applicant and his advocate being aware of the date of filing, proceeded with

their appeal until when they faced a preliminary objection from the Respondents, which resulted in the appeal to be struck out on 23 November 2022.

Responding to the complaint that there was a delay in supplying the applicant with a copy of the struck-out ruling up to 15 December 2022 after several follow-ups. Mr. Mgassa submitted that the applicant never attached a letter to prove that he timely requested the certified copy of the said ruling. That means the Applicant intentionally went to collect a copy of the ruling on 15 December 2022 because the same was ready for collection since the ruling date. Therefore, that cannot be the reason for his delay.

As to the ground that the applicant was suffering from old age diseases, which required him to attend several medical checkups, Mr. Mgassa submitted that the applicant attached the medical report (annexure SMD-5); however, the report covered the applicant's medical report from the year 2017 to 12th November 2022 when he was exempted from duties for six weeks which expired by 25 December 2022. Hence, the sickness of the Applicant could not be a reasonable ground for the further delay in filing this Application.

He also submitted that under paragraph 15 of his affidavit, the applicant admitted to having instructed advocate Nasra A. Mashauri to file this Application on 16 December 2022, while the application was filed on 7 February 2023 after a lapse of 53 days from the date when the Applicant instructed his advocate. And on this, the applicant failed to give any reasonable explanation for this further delay. To substantiate his submission he **Zainabu Viverous vs. Ernest Kato Elisa**, Land Case Application No. 35 OF 2021, Tanzlil (HC-Bukoba), where it was held that in an application for extension of time, the applicant has to account for each and every day of delay.

He concluded by submitting that, the Applicant has failed to account for each day of delay, consequently, was unable to advance any ground to justify the grant of this application.

Briefly, in rejoinder, Ms. Mashaura submitted that they make follow-up after the elapsed of one week due to the order of Msafiri J that the parties follow up on the copy of the ruling after one week. That was why he did not have the letter to prove the request because the registrar promised that the ruling would be ready for collection on 15 December 2022.

From above, she submitted that the days ought to run from 15 December 2022 to February 2023, therefore are 53 to 54 days of delay, which are accounted for by the illness of the Applicant, who had been in medical treatment, bed rest, suffering from old age diseases and attending medical checkups,

Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the submissions made by both learned counsel for the parties, the issue that has to be resolved is whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to file an appeal in this Court

The entry point is the decision of The Court of Appeal of Tanzania in **Lyamuya Construction Company Ltd v Board of Trustees of Young Womens' Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Tanzlil) where the Court was of the view that discretion to extend time is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. Further, the court formulated five guidelines which the applicant should show in an application for an extension of time. These guidelines are:-

- i. The applicant must account for all the period of delay.*
- ii. The delay should not be inordinate.*
- iii. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- iv. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

Again Court of Appeal in **Oswald Masatu Mwizarubi vs Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010 (unreported), while dealing with an application for an extension of time, had this to say;

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case. It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."*

From the above cases, this court has to consider whether the applicant passes the test by showing a good or sufficient cause.

Having gone through the affidavit and the submission by the applicant he has raised three grounds for seeking an extension:

**One**, a technical delay because the previous appeal was struck out

**Two**, he was delayed to be supplied with the ruling, which struck out his appeal until 15 December 2022.

**Three**, the applicant is suffering from old age diseases, which require him to attend several medical checkups

In determining the first ground, I will examine the period between filing the previous appeal to 10 June 2022, when the appeal was struck out. There is no dispute that the previous appeal (Appeal No. 52 of 2022) was filed out of time and, as a result, was struck out for being time-barred. However, in the case of **Bharya Engineering and Construction Ltd vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (Tanzlil), it was held that the prosecution of an incompetent appeal when made in good faith and without negligence, ipso facto constitutes sufficient cause for an extension of time and delay arising from the prosecution of that appeal was not actual, it is a mere technical delay.

The above decision contends that the incompetent appeal when made without negligence, ipso facto constitutes sufficient cause for an extension of time. The question is, was the appeal no. 52 of 2022 made without negligence? My answer is no. This is because the applicant's appeal was

delayed for one day. The applicant was supposed to file for an extension of time to file an appeal out of time but instead opted to appeal out of time without leave of the court for the same. The principle in limitation of period and extension of time is that even a delay of a single day must be accounted for. See **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), where the Court of Appeal insisted that an applicant should account for each day of delay. It held that;

*"Delay of even a single day has to be accounted for.*

*Otherwise, there would be no point of having rules prescribing periods Within which certain steps have to be taken."*

**Second** is the period between 23 November 2022, when the appeal was struck out, to 07 February 2023, when this application was filed. On this, the Applicant complained about having been supplied with a copy of the ruling on 15 December 2022 after several follow-ups. There is no dispute that the copy of the ruling was supplied to him on 15 December 2022. Let this court exclude those days. The fact is that from 15 December 2022 to 7 February 2023 is almost 53 days. In defending the 53 days, the counsel for the applicant stated that the applicant was suffering from old age diseases,

which required him to attend several medical checkups as per Annexure SMD- 5.

It is trite that the health issue if proven, is a sufficient ground to extend time because it is not a choice of human beings. See **Emmanuel Maira V. The District Executive Director Bunda District Council**, Civil Application No. 66 Of 2010 (Unreported) where it was held that;

*".... health matters, in most cases, are not the choice of human being, cannot be shelved and nor can anyone be held to blame when they strike..."*

But, in **Juto Ally v. Lucas Komba & Another, Civil Application No. 484/17 of 2017** (Unreported), where the Court of Appeal held that: -

*"Where the applicant's cause of delay is due to illness, must show that illness contributed to the delay as opposed to a general statement."*

From the above discussion and cited cases, I have the following;

**One**, neither in the affidavit nor in the submission the applicant did not mention his age to prove that he is old.

**Two**, the medical report indicated that the applicant was excluded from duty for six weeks, from 12 November 2022 to 25 December 2022. He was an outpatient, and the medical report suggested that he should attend the clinic regularly. Therefore, nothing in the report indicated that he had old age diseases. Rather than being diagnosed with the fracture, he was kept on the POP for six weeks, i.e., from 12 November 2022 to 25 December 2022.

Therefore, per the medical report, he failed to account for each day of delay from 25 December 2022 (the end of six weeks) to 7 February 2023, when the application was filed.

**Three**, in paragraph 17 of the affidavit, the applicant stated that after receiving the copy of the ruling on 15 December 2022, on the same date, he instructed his advocate to apply for an extension of time. Therefore, there was nothing which prevented the application from being filed earlier, soon after the previous appeal was struck out and when the applicant was supplied with a copy of the ruling.

Flowing from above, there is an inordinate delay, and the applicant failed to account for each day of delay. In my opinion, a 53 days delay is

inordinate, and the applicant did not act promptly. The issue of promptness in filing a suit is not a new phenomenon in our jurisdiction, as the Court of Appeal in **Emmanuel Rurihafi and another vs. Janas Mrema**, Civil Appeal No. 314 of 2019 (Tanzlii), held that;

*"The test to determine promptness is the question of fact which has to be decided on a case-by-case basis."*

In that decision, the Court of Appeal found that 22 days was a reasonable time for collecting copies of the ruling and drawn order in the struck-out appeal and preparing a meaningful application for an extension of time.

In the cited **Emmanuel Rurihafi** (Supra) case, the Court of Appeal quoted its other decisions with a similar issue. Those cases are;

One, **Samwell Mussa Ng'omango (as a legal representative of the Estate of the late Masumbuko Mussa) vs. A.I.C (T) Ufundi**, Civil Appeal No.26 of 2015 (unreported), where a single justice of appeal considered the circumstances of the case and observed that the applicant acted promptly for filing an application in less than 20 days after obtaining the certificate.

Two, **Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) vs. Mtumwa Moshi (as the Administrator of the Estate of the late Risasi Ngwale)**, Civil Application No. 407/17 of 2019, where also a single justice of appeal observed that a period of less than 30 days be a reasonable time.

In the circumstances of this matter, where the applicant was supplied with the copy of the ruling on 15 December 2022 and the same day instructed his advocate to prepare the application for an extension of time, 53 days is not a reasonable time, the applicant did not act promptly, and there is an inordinate delay.

Consequently, the applicant failed to advance a good and sufficient cause to warrant this court to exercise its discretion in granting an extension of time.

In the upshot, the application is dismissed with costs.

It is so ordered.



**K. D. MHINA**

**JUDGE**

**25/07/2023**