

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 345 OF 2023

(Arising from the decision of District Land and Tribunal of Kinondoni at Mwananyamala in Land Appeal No.132 of 2021 dated 22nd December 2022 by Hon. L. R. Rugarabamu)

PAULO MOSHI SOLOGO..... APPLICANT

VERSUS

JAILY MWANGAMA.....RESPONDENT

RULING

22nd & 30th June, 2023

L. HEMED, J.

In this application, the Applicant **Paulo Moshi Sologo** is seeking for extension of time within which to file an appeal out of time against the judgement and orders of the District Land and Housing Tribunal of Kinondoni at Mwananyamala in Land Appeal No. 132 of 2021, dated 22nd December 2022 delivered by Hon L.R. Rugarabamu, in favour of the respondent herein. This application was supported by the affidavit deposed by Mr. **Paulo Moshi Sologo** expounding the grounds of the application. The Respondent one **Jaily Mwangama** through his counter affidavit filed in Court on 20th June 2023 opposed the application.

The application was heard on 22nd June 2023 *viva voce*. Both parties appeared in person. Arguing in support of it, the applicant asserted that the delay in filling the application at hand was due to delay in obtaining copies of judgment from the District Land and Housing Tribunal for Kinondoni which was supplied to him on 25th January 2023. He argued that he was not informed when he was supposed to lodge his intended appeal. He prayed for an extension of time so that he can file the appeal against the trial Tribunal's decision.

The Respondent opposed by asserting that, at the trial tribunal, both parties applied for copies of the judgement which were ready for collection in time. He levelled blames against the applicant for being negligent in collecting the copies and processing the appeal within time. He prayed the application to be dismissed with costs.

In his rejoinder submission, the applicant reiterated his submissions in chief that, the delay was caused by failure to supply judgement in time by the District Land and Housing Tribunal.

Having gone through the rival submissions made by the parties, my duty is to deliberate on whether good cause has been demonstrated by the applicant to warrant this Court grant leave to file his appeal out of time under section 38(1) of the Land Dispute Courts

Act, [Cap. 216 R:E 2019] and section 14(1) of the Law of Limitation Act [Cap 89 R:E 2019]. The aforesaid provisions do not specifically provide for the factors to be considered by the Court in determining whether or not to extend time. However, *vide* case law, courts have developed guidance in assessing whether or not good cause has been established by the Applicant. In **Lyamuya Construction Company Limited v. Board of Registered Trustees of young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal set out the following guiding factors.

- a) *The applicant must account for all the period for delay*
- b) *The delay should not be inordinate.*
- c) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and*
- d) *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, in **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 the Court stated that:

"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 party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."

In this present case, the applicant had to account for all 12 days of the delay. I am holding so because in **Sebastian Ndaula case** (*supra*), it was stated thus failure to account for each day of delay amounts to a failure to advance "good cause" to justify the extension of time.

I have gone through the affidavit deposed by the applicant one Paulo Moshi in support of the application and could not find facts stated as to what the applicant was doing from 25th May 2023 up to 6th June 2023. Still, even after such application being struck out, yet he delayed for 12 days to the day he finally lodged Misc. Land Application No. 345/2023 for extension of time

The applicant has stated in the submissions that the delay was caused by the late supply of the ruling of this court striking out Misc. Land Application No. 344 of 2022 on 25th May 2023. However, he has not stated what efforts he deployed to get the said copies of the ruling. The applicant did not produce any document showing that he

requested for copies of the ruling. This connotes that the applicant was not active in making follow-up of the ruling, she was sloppy!

Additionally, going through the affidavit in support of the application, the 12 days of delay have not been accounted for. In the case of **Bushiri Hassan vs Latifa Mashayo**, Civil Application No. 3 of 2007, it was stated that: -

"Delay even of 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."

In the case of **Tanzania Coffee Board v Rombo Millers Ltd**, Civil Application No. 13 of 2015, the Court of Appeal of Tanzania had this to observe:

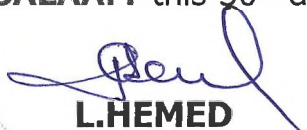
"... in an application for extension of time, the applicant has to account for each day of the delay."

From the foregoing, I find that the applicant was not diligent enough and has failed to account for the days of delays. The application is thus short of merits and it deserves to be dismissed. I

thus proceed to dismiss the entire application with costs. It is so ordered.

DATED at **DAR ES SALAAM** this 30th day of June 2023.




L. HEMED
JUDGE