

IN THE HIGH COURT OF THE UNITED OF REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION No. 367 OF 2023

GRACE.W. SHEYO (suing by her duly appointed Attorney Elizabeth Sheyo).....**APPLICANT**

VERSUS

UWASOKI**RESPONDENT**

RULING

Date of Last Order: 22.08.2023

Date of Ruling: 28.08.2023

A. MSAFIRI, J.

The applicant has brought this Application under Section 41 (2) of the Land Disputes Act [Cap 216 R: E 2019]. She is seeking for an order of extension of time to file appeal from the decision of the District Land and Housing Tribunal for Temeke in Land Application No. 228/2020 before Chinyele P.I. Chairperson dated 08th November 2022.

The Application is supported by an affidavit of the applicant herself (Grace Sheyo) and was opposed by the counter affidavit filed by Ally Mohamed Matimba, Chairman of the respondent.

The hearing of this Application was done by way of written submissions whereby Ms. Glory Sandewa, learned advocate from Tanzania Women Lawyers Association (TAWLA) under legal aid, drafted

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and filed the submissions for applicant and Mr. Mashiku J. Sabasaba learned advocate, represented the respondent. The parties adhered to the schedule of written submissions as ordered by the Court.

The applicant submitted that the judgment of the Land Application No. 228/2020 was delivered on 08/11/2022 and being aggrieved by the decision requested to be supplied with copy of the said judgment. That the copy was given to her on 07/12/2022 and after the receiving the same, she went at TAWLA for legal assistance but unfortunately their offices were closed for holidays.

She submitted further that after holidays in January she could not file the appeal on time as she had to travel to Kigoma to find her son who had disappeared around January. That after finding her son, she came back to Dar es Salaam and first had to ensure the safety of her son and then started to process for the appeal out of time. She submitted further that the delay in filing the appeal within time was not due to her own fault but for reasons that the requested copy of judgment was not supplied to her on time and later she had to take care of her child. She prayed for the application to be granted as the intended appeal has overwhelming chance of succeed.

To bolster her points, she cited the case of **Tanga Cement Company limited vs D. Msangwaa and Amos A. Mwalabda** Civil Application No 6 of 2001.

In reply the counsel for the respondent argued that the applicant's mission to Kigoma ended on 15th March 2023 but the applicant failed to account for her delay after her return to Dar es Salaam and that the

applicant failed to file this Application on time as it was filed on 20th June 2023, about three months after her return to Dar es Salaam. He contended that the applicant did not give any reasonable explanation on her failure to account from 15th March 2023 to 20th June 2023.

To bolster his point, he cited the case of **Hassan Bushiri vs Latifa Lukio Mashao**, Civil Application No 3 of 2007, CAT (unreported) which held that in order to establish sufficient cause for extension of time the applicant must account for all days of delay. He prayed for the dismissal of the Application with costs.

In rejoinder, the applicant submitted that after she came back from Kigoma, She had to nurse her child so as he could be in good health physically and mentally and this took time. She cited the case of **Kalunga and Company Advocate vs NBC** [2006] TLR 235 whereby the Court held that what constitutes a good cause cannot be laid down by any hard and fast rules. She reiterated her prayers.

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 to grant extension of time to file appeal under Section 41 (2) of the Land Disputes Courts Act. The same provision provides thus;

41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

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(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days. (Emphasize is mine).

The aforesaid provision gives discretion to the Court to extend time, upon the applicant showing good cause for the delay. This is elaborated further in the case law where this Court and the Court of Appeal have developed guidance in assessing whether or not good cause has been established by the applicant. In the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha, 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.*

In the present case, the applicant had to account for each day of delay i.e. from 15th March, 2023 up to 20th June 2023, when she filed this Application, but she failed to do. In the case of **Sebastian Ndaula**

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vs Grace Rwamafa, Civil Application No 4 of 2014, it was held that 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 Grace W. Sheyo, in support of the Application where she stated that she requested the copy of judgement on 08/11/2022, it was supplied on 07/12/2022, after receiving the said copy, she went at TAWLA for legal assistance and found their office was closed. That on January 2023, she travelled to Kigoma and returned on 15th March, 2023. The applicant stated she was nursing her child from 15th May 2023 up to 20th June 2023. Unfortunately, the applicant did not provide any evidence to prove her claims. She did not state where she took her child for medication, she did not provide the name of that child or even the birth certificate to prove that indeed she has a child.

In paragraph 5 of affidavit it reads; -

*5. That, in January the applicant could not file the appeal on time as she had to travel to Kigoma and find her son who disappeared around January. **A copy of RB and travelling tickets to Kigoma is hereby attached marked Annexute G2 leave of the Court is sought to form part of the application.***

I have seen the attached copy of ticket and the said RB. They are not helping as they don't reveal much information about the purported lost son or the accounting of the days when the applicant could not file the intended appeal out of time.

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In the case of **Kalunga and Company Advocate vs NBC(supra)** which was referred to this Court by the counsel for the applicant, it was held that what constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is 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.

Adopting the above observation, it is my finding that it was the applicant's duty to provide this Court with the relevant materials so as this Court could exercise its discretion and grant the sought orders. However, the applicant has failed to provide this Court with any relevant material to support her story.

From the foregoing, I find that the applicant was not diligent enough and has failed to account for the days of delay. The Application thus lacks merits and it is hereby dismissed with costs.

It is so ordered.


A. MSAFIRI
JUDGE

28/8/2023