

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 740 OF 2023

(Originating from Kinondoni District Land and Housing Tribunal in Application No. 141 of 2021)

YUSUFU LUKUTA t/a TIGO PESA1ST APPLICANT

BAZIR TARIMO t/a J.J AUTO SPARES.....2ND APPLICANT

BAZIR TARIMO t/a MCHINA USED SPARES.....3RD APPLICANT

HAMADI MKUNDE t/a MCHINA USED SPARES.....4TH APPLICANT

ABDULRAHMAN MOHAMED t/a TRADITIONAL MEDICINE.....5TH APPLICANT

**ABDULRAHMAN MOHAMED t/a TRADITIONAL
MEDICINE CLINIC.....6TH APPLICANT**

HAJI SHABANI KIBWANA.....7TH APPLICANT

VERSUS

TABU RAMADHANI MATTAKA..... RESPONDENT

Date of last order: 06/02/2024

Date of ruling: 15/02/2024

RULING

A. MSAFIRI, J.

The applicants have lodged the present application by way of chamber summons under Section 41(2) of the Written Laws (Miscellaneous Amendments) Act, No.2 of 2016. They pray for an order of the Court for extension of time within which they may file an appeal against the decision of the District Land and Housing Tribunal of Kinondoni

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at Mwananyamala (herein trial Tribunal) by Honourable L. R Rugarabamu, Chairperson in Application No. 141 of 2021 dated 01/4/2021.

The application was supported by an affidavit deposed by Juliana J. Mumburi, advocate of the applicants. The same was contested by the respondent through the counter affidavit deposed by Nickson Ludovick, counsel for the respondent. The applicants also filed a reply to counter affidavit.

By leave of the Court, the application was heard by way of written submissions whereby the applicants were represented by Ms. Juliana J. Mumburi, learned advocate and the respondent was represented by Mr. Nickson Ludovick, learned advocate.

In his written submission in chief, Ms. Mumburi stated that the grounds for making this application are stated in the affidavit in support of the application with the numerous documents attached to the said affidavit. She adopted the contents of the said affidavit.

The counsel for the applicants submitted that the impugned judgment was delivered on 01/4/2022. That, after receiving the said judgment, she filed an appeal against the judgment within the time which

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was Extended Appeal No. 45 of 2022. That the appeal was struck out on 08/3/2023 but the copy of the ruling was not supplied to them.

That from 12/3/2023 after obtaining the hard copy of the ruling of the Extended Appeal No. 45/2022, to date, the 5th, 6th and 7th applicants have failed to refile the case to the court due to the fact that they were facing economic problems that they didn't have money to pay the advocate fees until on 11/09/2023 when they paid the advocate fees. The counsel stated further that the said applicants faced economic constraint as their business collapsed due to the eviction from the place which they previously occupied. She prayed for the application to be granted.

In his reply submission, Mr Ludovick adopted the contents of the counter affidavit with the attached documents. The counsel contended that the applicants have not advanced sufficient reasons for extension of time. First that they have not accounted for each day of delay. That the applicants have delayed for about 570 days from 01/4/2022 to 01/11/2023 when the present application was filed. Second, that the claimed financial constraint has never been the ground for extension and there is no EFD Receipt to show when the payment was made to the counsel's advocate. Third, that the intended appeal has been overtaken by events because the execution is already done and the respondent was

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given his land by the Court Broker. He prayed for the Application to be dismissed with costs.

In reply to counter affidavit, the applicants denied the respondent's claims raised in the counter affidavit and stated that from 08/3/2023 it was eight months since the Extended Appeal No.45 of 2022 was struck out. That due to economic factors all the applicants faced difficulties and they need time to find money to pay the advocate's services in the new application.

Furthermore in rejoinder, the counsel for the applicant mostly reiterated her submission in chief. She pointed the reasons for the extension of time to be first; the fact that the applicants were denied their right to be heard at the trial Tribunal and second; that the applicants faced economic constraints to the extent that they were unable to engage an advocate to attend their case.

The extension of time is purely the court's discretion. However for the court to exercise its discretion for extension of time, good cause must be shown. It follows therefore that the applicants are required to demonstrate good cause before the court can grant an extension of time.

However, what constitutes good cause has not been defined in the provisions of law but has been set under case law in a number of *Auth.*

decisions. In the said decisions a number of factors have to be considered before the court can exercise its discretion and grant the sought extension of time. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant and if there is existence of the point of law of sufficient importance such as the illegality of the decision sought to be challenged. (See the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women Christian Associations**, Civil Application No. 2 of 2010 (unreported)).

It follows then that the issue for determination in the application at hand is whether the applicant has demonstrated good cause for this Court to exercise its discretion and grant the orders sought.

I have read the contents of the affidavit and the reply to counter affidavit all in support of the application along with the submission by the counsel for the applicants in Court. It is clear that the major reasons advanced by the applicants are first that they were condemned unheard in Application No. 141 of 2021. It is stated in the records that the now respondent instituted the above named Application at the trial Tribunal. That the matter was heard whereby the then applicant gave his evidence and closed his case. After the closure of applicant's case, the date was set for the defence case however before that date, the trial Tribunal file case

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was called by the High Court for revision following the application for revision which was filed to the High Court by the then respondents who are now the applicants.

After revision was heard and concluded, the High Court remitted the case file to the trial Tribunal to proceed with the hearing. That after the case file has been remitted to the Tribunal, the current applicants were informed by summons to appear for defence and the case was set to proceed with defence hearing on 24-25/02/2022. On the said date, the defence could not proceed as the case file was again called to the High Court following the complaints by the 7th applicant.

The case file was again remitted to the trial Tribunal to proceed with the hearing and the applicants were summoned to appear for their defence hearing on 25/3/2022. That on that date all the applicants failed to appear and the affidavit of process server shows that the applicants refused to receive the summons. The Tribunal then decided to proceed in absence of the applicants hence the application was decided basing on the evidence of the current respondent only. It is the submission of the counsel for the applicants that they were denied their right to be heard as they were not given a chance to defend their case.

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I have read the impugned judgment which was delivered on 01/4/2022. At page 7 it shows that the now applicants who was then the respondents were summoned but they refused to receive the summons hence they did not appear to defend their case and the trial Tribunal decided to proceed on determining the matter on one side. This particulars shows that the applicants at all the time were aware of the matter before the Tribunal but for the reasons known to themselves they refused the summons which was served to them to appear for the continuation of the hearing of their case. In such circumstances the applicants cannot now claim that they were refused their right to be heard as it was themselves who refused to appear in court and exercise this right to be heard.

Second reason which has been advanced by the applicants is economic constraint. The counsel for the applicants stated that they faced economic fall down following their eviction from the disputed premises. That they were looking for the money to pay advocate fees so that the advocate could file their case in this Court. However I find this reason to be insufficient. The applicants did not state when did they get the money and when did they pay the advocate. Furthermore, I agree with the submission by the counsel for the respondent that money constraint has

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never been the reason for the extension of time. This is for the reason that there are still ways of filing or instituting the case in court by the applicants themselves and they could have followed the procedure of getting legal aid if they faced money constraint.

In addition, the judgment of the first appeal by the applicants which is the Extended Land Appeal No. 45 of 2022 was delivered on 08/3/2023. The counsel for the applicants was present in court on that date. If the counsel was present on the date of delivery, it means that the applicants were aware of the judgment and could have promptly filed their appeal on time. But the applicants did not state the time they purported to face the economic constraint and the time when they were able to pay their advocate. In conclusion I find this reason to be weak and wanting.

I also find that the applicants have failed to account for each day of delay from the time of delivery of the first appeal i.e. on 08/3/2023 to the time they instituted this Application i.e. on 01/11/2023. Among the conditions set in the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women Christian Associations** (supra), is the need to account for each day of delay. Delay of even a single day has to be accounted for as it was held in the case of *Alle*.

Bushiri Hassan vs. Latifa Mashayo, Civil Application No. 3 of 2007,
where 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."

From foregoing reasons, I find that the applicants have failed to demonstrate sufficient reasons for this Court to grant the extension of time sought. It follows then that this Application has no merit and it is hereby dismissed with costs. Right of further appeal explained.

It is so ordered.




A. MSAFIRI
JUDGE
15/02/2024