

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 548 OF 2023

(Arising from the judgment of Application No. 251 of 2020 at

Kinondoni District Land and Housing Tribunal, Mwananyamala, before Hon. Mbilinyi.

PLAZA INVESTMENT LIMITED..... APPLICANT

VERSUS

24 HRS LOW PRICE HYPER & SUPER MARKET.....1ST RESPONDENT

ABDALLAH M. MBARAK.....2ND RESPONDENT

MANSOOR MOHAMED.....3RD RESPONDENT

MKWABI SUPERMARKET.....4TH RESPONDENT

EYE STUDIO.....5TH RESPONDENT

GELATO DREAMS.....6TH RESPONDENT

Date of last order: 15/02/2024

Date of Ruling: 28/02/2024

RULING

A. MSAFIRI, J.

The applicant have lodged the present Application by way of chamber summons under Section 41(1) of the Law of Limitation Act, Cap 89 R.E 2019 and Section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019. She pray for an order of the Court for extension of time within which she may file an appeal against the Judgment and Decree of the

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District Land and Housing Tribunal of Kinondoni at Mwananyamala (herein trial Tribunal) by Honourable Mbilinyi, Chairman in Application No. 251 of 2020 delivered on 08/5/2023.

The Application was supported by an affidavit deposed by Nasri A. Hassan, an advocate representing the applicant. The respondents contested the Application through their counter affidavits. The joint counter affidavit of the 1st, 2nd, and 3rd respondents were deposed by Michael O. Kabekenga, counsel representing them. The 4th respondent although she was not contesting the application, also filed a counter affidavit which was affirmed by Kawkab Yahya Hussein, the Principal Officer of the 4th respondent. The 6th respondent also filed her counter affidavit through Carl Davis, the Managing Director of the 6th respondent. The 5th respondents did not file the counter affidavit and they informed the Court that they were not contesting the application.

By leave of the Court, the Application was heard by way of written submissions whereby the applicant's submission in chief and rejoinder was drawn and filed by Nasri Hassan, learned advocate, the 1st, 2nd and 3rd respondents joint written submission was drawn and filed by Mr. Michael O. Kabekenga, learned advocate, and the 6th respondent written submission was drawn and filed by Mr. Carlos Cathbety, learned advocate. *Adls.*

The 4th and 5th respondents did not file the submissions as they were not contesting the application.

In the submission by the applicant, Mr. Hassan started by praying to adopt the contents of the affidavit in support of the application to form part of his submissions. He said that the applicant was aggrieved by the decision of the District and Housing Tribunal of Kinondoni in Application No. 251 of 2020 which was delivered on 08/5/2023. He managed to file the appeal on time before this court. However, the said appeal was struck out *suo motu* by this court on 31/8/2023 for the reason that all the parties listed in the judgment of the trial Tribunal should be joined in the appeal. That the applicant had to file a fresh appeal before the court but he was time barred hence this current application.

The counsel accounted for the days of delay that from the date of impugned judgment on 08/5/2024, the applicant was preparing to file an appeal and filed it on 19/6/2023. On 19/6/2023 the applicant was waiting for summons to appear and on 13/7/2023 summons to appear was issued and this court ordered the appeal be disposed by way of written submissions. On 31/8/2023 the appeal was scheduled for judgment but the court found irregularity and it was struck out. That after that, the

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applicant prepared and filed the current appeal on 01/9/2023 and on 04/9/2023 the application was admitted and received by the court.

Mr. Hassan submitted further that the delays involved are technical ones and not actual delays for the reason that the original appeal was filed on time and immediately after being struck out, the applicant immediately filed this application. He said that technical delay is one of the sufficient reasons to grant an extension of time.

To bolster his points, the counsel cited the case of **Salvand K.A. Rwegasira vs. China Henan International Group. Co .Ltd**, Civil Reference No. 18 of 2006. He prayed that the court be pleased to grant the Application.

In reply submission, Mr Kabekenga, counsel for the 1st, 2nd and 3rd respondents prayed to adopt his counter affidavit. He submitted that the above named respondents disputes the assumption put by the applicant that the delay to file an appeal was technical one for the reason that the applicant failed to disclose reasons behind her failure to join the other parties during the previous appeal which was struck out. That the applicant did not explain either in the affidavit or submission in chief on the reasons behind failure to join parties who existed in the original judgment. That there is no justification as to why the applicant failed to

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join the 4th, 5th and 6th respondents. The counsel submitted that if the applicant would have been acting diligent enough, he should have not misjoined the parties and therefore the appeal would not have been struck out by the court. He stated further that, the reasons advanced by the applicant are flimsy and not substantive to allow this application. He prayed to the court to dismiss the application with costs.

The 6th respondent through her counsel filed a very brief reply submission and stated that she do not contest the application as she has no interest over the matter.

The counsel for the applicant filed rejoinder in which he submitted that the reason for not joining the other respondents in the original appeal was stated clearly in paragraphs 7 and 8 of the affidavit in support of the application. That the applicant did not join the said respondents as they did not appear during the trial before the trial Tribunal. The counsel reiterated his prayers.

It is a matter of principle that 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 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 this 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 submission of the parties along with the affidavit and counter affidavits. I see that the major reason advanced by the applicant is that there was a technical delay as the first appeal before the court was filed on time but it was struck out for technical reasons.

In the application at hand it is not in dispute that the applicant's appeal was struck out on 31/8/2023 for being incompetent. The applicant

acted promptly and filed the instant application on 04/9/2023. The applicant has accounted for each day of delay in his affidavit whereby he stated that immediately after the judgment of the trial Tribunal which was delivered on 08/5/2023, he filed an appeal to this court on 19/6/2023. The appeal was within prescribed time. The applicant has stated further that after the appeal was struck out on 31/8/2023, he filed this application online through the judiciary system on 01/9/2023 and it was admitted on 04/9/2023.

On their part, the contesting respondents i.e. 1st, 2nd, and 3rd respondents through their counsel did not dispute the account of events by the applicant but challenge the applicant's act of filing the defective appeal in the first place.

I find that the applicant has managed to establish sufficient reasons for delay and has accounted for the days of the delay as per the requirement set in the case of **Lyamuya Construction Company Ltd(supra)**. The applicant did not sleep on his right but acted promptly and diligently immediately after his original appeal was struck out. The applicant has already been penalized for his act of filing the defective appeal as the said appeal was struck out. Since his fault was penalized by

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the court by striking out the appeal, the applicant cannot be penalized twice as he has demonstrated sufficient reasons for his delay.

For the foregoing reason, I hereby grant the application and order the applicant to file the intended appeal within 14 days from the date of obtaining certified copy of this Ruling. Costs shall be in the main cause.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri", is written over a horizontal dotted line.

A.MSAFIRI

JUDGE

28/02/2024