

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 2 OF 2021

(C/O Application case No. 12 of 2018 District Land and Housing Tribunal
for Katavi)

SAIMON MASASILA APPLICANT

VERSUS

LEONARD SELESTINO NKANA RESPONDENT

RULING

Date: 25/08 & 27/09/2021

Nkwabi, J.:

The applicant filed this application praying for several orders. The orders prayed for by the applicant are:

1. Restoration of Misc. Land Application number 1 of 2019 between himself and the respondent in this application,
2. Extension of time for filing an appeal out of time,
3. Costs of the application, and
4. Any other relief(s) this court deems fit and just to grant.

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The chamber summons was made under section 41(2) of the Land Disputes Courts Act Cap 216 R.E. 2002. The application is supported by the affidavit of the applicant.

In his affidavit, the applicant averred that his legal representative failed to attend court on time because the bus ticket was resold to another person hence his duly appointed agent failed to appear in court in time and when he reached the court premises, he was told that the case had been struck out. That is supported by the affidavit of his agent Masanja Wilson Emmanuel.

The respondent filed a brief counter-affidavit while resisting the application. He averred that the averments in the affidavit of the applicant are false and Wilson Emmanuel is not an advocate hence he could not represent the applicant. The reasons for non-appearance are very flimsy. He further averred that the averments of the applicant are devoid of merits and that the applicant defaulted appearance at many times.

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On 03/09/2020 his Lordship Justice C.P. Mkeha, J. struck out Misc. Land Application No. 1/2019 for want of prosecution since the applicant defaulted appearance. In that application the applicant was seeking for leave for extension of time for filing an appeal.

Before me, hearing of this application proceeded by way of oral submissions. Parties appeared in person and were not represented. The applicant argued in his submissions that he delayed to file the appeal. Firstly, he delayed for 15 days. There was an application for extension however the application was dismissed for want of prosecution. Secondly, he delayed to refile this application for lack of money. On 03/02/2021 he filed this application.

The judgment of the trial court consists of illegalities. The case heard by District Land and Housing Tribunal had already been heard and determined by Ward Tribunal. The applicant in District Land and Housing Tribunal did not describe the boundaries on the land in dispute, he added. He then prayed the application be granted with costs so that the illegalities are determined.

Respondent argued that he was satisfied with the decision of the District Land and Housing Tribunal and the applicant delayed without reasonable

grounds. The evidence in the District Land and Housing Tribunal described properly the boundaries. He urged the application be dismissed.

In rejoinder, the applicant stressed that, the form of the application in District Land and Housing Tribunal on the 3rd item which demands the address and the place where the land in dispute is situated, that item was not filed in properly. That is illegal, he added. In Ward Tribunal he prosecuted Ezabio Marco and Michael Ezabio claiming for 3 acres. In the District Land and Housing Tribunal prosecuted them and added the number of acres. He ought to have executed the decree of the Ward Tribunal, that is illegality, he elaborated. He reiterated his prayers that the application be granted with costs.

Upon reading carefully the affidavits of both parties and going through the submissions of both parties, I am of the view that the pertinent issues to be determined by this court in this application are:

1. Whether the applicant has accounted for every day of the delay or at least acted promptly and diligently.

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2. Whether the applicant has managed to establish that there are illegalities in the decision of the District Land and Housing Tribunal he intends to challenge to this Court.
3. Whether the applicant has assigned good cause for this court to grant extension of time within which to file his appeal out of time.
4. Whether the applicant has advanced sufficient justification for restoration order to be issued for the struck-out application.

I begin deliberating the 2nd issue which is whether the applicant has managed to establish that there are illegalities in the decision of the District Land and Housing Tribunal he intends to challenge to this Court. The alleged illegalities in the impugned judgment are:

1. The tribunal lacked jurisdiction to entertain the matter owing to the fact that the respondent failed to properly describe the suit land as required by law.
2. The court erroneously entertained the matter which was res judicata

It is trite law that extension of time, is a discretionary order. For this court to issue such order/leave, the applicant has to give sufficient reasons. As to the allegations of illegalities, the applicant has to put to the court all the materials necessary to enable the court to use its discretionary powers. See **Regional Manager TANROAD Kagera v Ruaha Concrete Co. Ltd, CAT Civil application No. 96 of 2007, at DSM (Unreported):**

"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."

The applicant has intentionally hidden the alleged impugned judgment of the District Land and Housing Tribunal for Katavi. In paragraph 9 of his affidavit, he indicates to attach copies of the application in DLHT Katavi and the judgment of Katuma Ward Tribunal. He does not give reasons why he did not attach the copy of the impugned judgment. I am convinced with the view of the respondent that the averment that the judgment of the District

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Land and Housing Tribunal is tainted with illegalities of the applicant is meritless.

Further, it is trite law that the illegalities alleged should be clearly seen on the face of the record as per **Mekefason Mandali & 8 Others v The Registered Trustees of the Archdiocese of Dar-es-Salaam Civil Application No. 387/17 f 2019** (CAT DSM) (Unreported) at p 15-16

*I am fortified by what the Court observed in the case of the **Principal Secretary of Defence and National Service v Devram Valambia** [1991] TLR 387. It was held in that case that:-*

*It is crucial to point out however, that for this ground to stand, the illegality of the assailed decision must clearly be visible on the face of the record, and as we said in **Lyamuya Construction Company Limited** (supra), such point of law must be that of sufficient importance.*

such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction, (but) not one that would be discovered by a long-drawn argument or process."

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The justification for the application of extension of time on point of illegalities is rejected as it has no merits for the above reasons. Henceforth, the 2nd issue is answered in the negative.

I now embark discussing the 1st issue. This is in respect of whether the applicant has accounted for every day of the delay or at least acted promptly and diligently. On this question for determination, applicant simply argued in submission in chief, that this application failed to file the appeal on time due to financial constraints.

The respondent was not amused by the submission and stated that such argument is flimsy. I accept the respondent's contention. He also did not act diligently. In **Civil Application No. 218 of 2016 Interchik Company Limited v Mwaitenda Ahobokile Michael** (unreported) CAT where it was held:

It is this Court's firmly entrenched position that any applicant seeking extension of time under Rule 10 of the Rules is required to account for each day of delay.

The first issue, therefore, must be answered in the negative.

I turn next to discuss the 3rd issue which is whether the applicant has assigned good cause for this court to grant extension of time within which to file the appeal.

The applicant claimed he delayed filing the appeal due to financial constraints, and the prior application for extension of time was struck out due to difficulties his duly appointed agent faced in getting a bus seat from Mpanda to Sumbawanga.

The respondent countered such argument by urging this court to rule that such contentions are flimsy.

I am aware that there are no hard and fast rules in determining sufficient causes to enlarge time as per the decision in **Christmas Eliamikia Swai & 2 Others v Tanzania Electric Supply Co. Ltd & Another Civil Application No. 559/01 of 2018**. Since there is no good cause has been shown this case law cannot assist the applicant. I further accept the respondent's argument that the allegations by the applicant are false and an

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afterthought. The matter was fixed for coming for hearing on the very date on 01/09/2020 in the High Court at Sumbawanga. The power of attorney was executed on the very day that is 1st September 2020 at Mpanda. I take judicial notice that the distance from Mpanda to Sumbawanga is 242 kilometers, which would take about four hours for travelling by bus. Assuming that the office of the learned counsel is open at 07:30 am. The process of drawing the power of attorney and then travelling to Sumbawanga from Mpanda definitely, the agent would not have reached at the court house on time. He reached there late not on account of transport as alleged or reasons beyond his control, see **Criminal Application No. 1/2016 Ally Kinanda & 2 Others vs The Republic CAT At Dodoma (July 2018) Mwarija JA:**

*"As has been held times out of number, ignorance of law has never featured as good cause for extension of time (See for instance, the unreported ARS Criminal Application No. 4 of 2011 **Bariki Israel Vs The Republic;** and MZA Criminal Application No. 3 of 2011 – **Charles Salungi Vs The Republic**). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always*

ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."

I agree, as said above, that the averments in both affidavits in favour of the applicant are false and rejected.

The claim of financial constraints has been held not to be justification for extension of time. This averment or ground for praying for extension is unacceptable. An indigent litigant could ask/make an application to file his or her appeal without paying the necessary fees. As to his alleged emergencies, the agent ought to have travelled on 31/08/2020 to do away with such emergencies, else, courts would not do any job as they would be waiting for each one's emergencies. In essence, the applicant lacked prudence in the conduct of his case, in the circumstances, no extension will be granted. See **Tanzania Tailors v. Keshvaji Lalji [1970] H.C.D. no. 236.**

The culmination of the above discussion, 3rd issue is as well answered in the negative.

I advance to briefly address the 4th issue which is to the effect, whether the applicant has advanced sufficient justification for restoration order to be issued for the struck-out application. This issue will not detain me much. The cause for the striking out of the application he is seeking restoration he attributed it to transportation problem from Mpanda to Sumbawanga for his authorized agent.

The respondent on his side, argued that that claim is flimsy and ought to be rejected. I have already touched this matter when I was contemplating whether to grant the applicant's application for extension of time and rejected it. I need not repeat the deliberation. It suffices to accede the respondent's contention that the argument is flimsy. In the circumstances, the 4th issue is as well answered in the negative.

The outcome of the above deliberation, the application is dismissed with costs.

It is so ordered.

DATED and SIGNED at MPANDA this 27th day of September, 2021




J. F. Nkwabi, J.