

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

MISC. LAND APPLICATION NO. 32 OF 2021

*(Arising from the Ruling of the District Land and Housing Tribunal for Kondoa at
Kondoa in Miscellaneous Application No. 22 of 2020 dated 11/09/2020)*

MARIAM J. TINDO APPLICANT

VERSUS

FATUMA J. TINDO RESPONDENT

RULING

10 & 23/08/2021

KAGOMBA, J.

On 17/05/2021 the applicant **MARIAM J. TINDO** filed a chamber application applying for extension of time to file an appeal against the ruling of the District Land and Housing Tribunal for Kondoa at Kondoa (hereinafter “Kondoa DLHT”) dated 11/09/2020 as well as costs. The application is made under section 41 of the Land Disputes Courts Act, Cap 216 R.E 2019 and was supported by the applicant’s own affidavit. The respondent **FATUMA J. TINDO** filed her counter affidavit on 29/06/2021 to oppose granting of extension of time to the applicant.

The background of this application can be traced from the decision of Bereko Ward Tribunal which tried the case between the parties and needs be stated, albeit briefly. I should state however that the proceedings of Bereko Ward Tribunal and the judgement that ensued were not part of the record availed to the court during the hearing of this application. I have extracted the same from the Ruling of Kondoa DLHT. At the Kondoa DLHT, the applicant, through her advocate, applied for an order for extension of time to present her appeal out of time against the decision of Bereko Ward Tribunal dated 26/12/2019 apparently made in favour of the respondent herein. The applicant submitted before Kondoa DLHT that she was not served to appear for trial at the Bereko Ward Tribunal where the dispute originated. For that reason she did not appear for trial hence the matter was heard and determined ex-parte against her. She said she was totally unaware of the trial at the ward tribunal a reason she delayed to file an appeal to the Kondoa DLHT, and consequently she filed an application to Kondoa DLHT for extension of time to appeal out of time against the decision of the trial tribunal.

The ruling of Kondoa DLHT further reveals that the respondent through her advocate, opposed the application for extension of time on grounds that the applicant didn't adduce good cause for its granting. The respondent's advocate cemented his opposition by citing before Kondoa DLHT the case of **Samwel Sichone Vs. Bulege Hamisi**, Civil Application No. 8 of 2015 (Unreported) which quoted

the case of **Henry Muyaga Vs. TTCL**, Civil Application No. 8 of 2011 (Unreported) where the court stated:

“.....it has been held that, in considering an application for extension of time the court may take into consideration such factors as the length of delay, the reason for the delay, the chance of success on the intended appeal and the degree of prejudice that the respondent may suffer if the application is not granted.”

The respondent's advocate argued that the applicant never included in her application the grounds cited in the above decision, thus she did not show good and sufficient cause to warrant extension of time. Records shows that the application for extension of time was lodged at Kondoa DLHT long after the tribunal had executed the decision of Bereko ward tribunal in Misc. Application No. 18 of 2020 on 06/4/2020. Under such scenario, the Kondoa DLHT opted not to consider the application apparently for fear that it would be judging on its own cause. The Kondoa DLHT decided to advise the applicant to seek extension of time from a court of higher authority. In reaching this decision, the Kondoa DLHT based on the case of **Hamisi Juma Nkumbi Vs. Mwakiti Village Council**, High Court Land Revision No. 04 of 2018 where Mlacha, J held that when the execution has already been effected by DLHT it is the duty of the tribunal to ensure its decision is executed accordingly. That, it is not proper for the tribunal to alter its decision as doing that will bring doubts. The High court had further held that the best way is for the

aggrieved party to seek for prayers of revision or appeal at the higher authority and not at the same tribunal. Accordingly the Kondoa DLHT did not grant the order sought but advised the applicant to knock the doors of higher authority. Hence the current application.

During hearing of this application, both parties were unrepresented and their submissions were very short and simple. The applicant prayed the court to adopt her chamber application and the supporting affidavit as her submission to the court. She could hardly speak owing to old age and possibly illiteracy too. As such the court relies solely on her affidavit in which she states that she was not supplied with the ruling of Kondoa DLHT in time, that she received copy of the ruling in January, 2020 but the same was certified on 25/11/2020. She further avers in her affidavit that the delay to file her appeal in time was not out of negligence but it was due to ill health of her daughter. She does not give any further and better particulars of who is that daughter and the type of illness she was suffering from. The applicant further avers that she has overwhelming chance to succeed in her appeal since "the Kondoa DLHT went to the merit of the case when not granting the extension of time". She concludes by stating that if the orders sought in her chamber application are not granted, it shall be injurious to her and her family since the respondent wants to sell her house at Bereko, Kondoa.

The respondent candidly opposed the application. She urged the court to get proof that the applicant had a good cause for delay

to file her appeal in time. The respondent averres that even at the Kondoa DLHT the applicant delayed to file her application for extension of time to appeal, which she filed after the decision was already made by Kondoa DLHT. In essence the respondent was referring to the fact that the applicant filed her application for extension of time to the Kondoa DLHT while the tribunal had already executed the decision of Bereko ward tribunal. That is all from parties' submissions.

I have carefully gone through the submissions of both parties. The issues to be determined by this court, as it is always the case with applications for extension of time to file appeals, is whether the applicant has adduced sufficient reasons for grant of the orders sought. Apparently, the applicant has given two reasons for her delay to file her appeal in time. **One**, her daughter's ill health which made it impossible to concentrate on the case; and **two**, delay in obtaining copy of ruling of Kondoa DLHT. I recall that the respondent urged this court to put the applicant to strict proof of her reasons for delay. At the back of my mind is the general principle that granting of extension of time or otherwise, is a discretion I have. However, since the discretion is judicial I must exercise it judiciously too, according to the rules of reasoning and justice. In doing so, I shall not attempt to reinvent the wheel.

In the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association**

of Tanzania, Civil Application No. 2 of 2010 (unreported), the Court of Appeal reiterated the following guidelines for the grant of extension of time:-

“(a) The applicant must account for all the period of 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.

(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.”

Same guidance was provided in the case of **Henry Muyaga Vs. TTCL (Supra)**, I shall be guided by these factors in my determination of this application.

With regard to the length of delay, the decision of the Kondoa DLHT which the applicant seeks to eventually appeal against is dated 11/09/2020. According to paragraph 3 of the applicant’s affidavit, a copy of the ruling of Kondoa DLHT was received in January. The specific date and year were not stated. However, the applicant avers in her affidavit that the ruling copy was certified on 25/11/2020. The application was filed on 17/05/2021, being approximately six (6) month since the ruling was certified. No doubt

this is long time compared to the 45 days available for an aggrieved party to file an appeal under the Land Disputes Courts Act Cap 216 R.E 2019 against the decision one seeks to overturn. It is my view that six months delay is not uncommon and in fact is not too long for seeking justice if the delay can be sufficiently justified.

As stated earlier herein the reason for delay as pleaded by the applicant is principally the ill health of her daughter. This was not sufficiently proved. This cause for delay was pleaded in too general terms. Neither the sick nor the sickness was mentioned. Typically, the applicant was expected to convince the court by either attaching medical records showing the identity of the sick daughter, the seriousness of the illness, place of treatment, the lengthy of treatment and how the applicant was impacted by all such hassles. The applicant was expected to show in her affidavit how the sickness of her daughter was prohibitive to filing of the appeal in time. Pleading the daughter's sickness in general terms on a factor which seemed to be the backbone of the application is suicidal to the application. As such we find that this cause was not sufficiently proved to be a good cause.

On the chance of success of the intended appeal, it is my view that the ruling of Kondoa DLHT did not reject the application as such. It stated the legal reasons why the applicant was advised to seek time extension orders from an authority higher than Kondoa DLHT. The applicant believes that she has overwhelming chance to

succeed in the appeal because the chairman of Kondoa DLHT “went to the merit of the case when not granting the extension of time”. I think the applicant misdirected herself here. She has forgotten that by filing her application to this court her underlying objective is to be given time to file an appeal for overturning the decision of Bareko Ward Tribunal. Confusingly, she is applying for extension of time to file an appeal against the ruling of Kondoa DLHT and not the decision of Bareko ward tribunal. The applicant needs a clear compass of where she wants to go and how she reaches there. She needs to be clear on which decision she is actually intending to challenge. The reason the applicant went to Kondoa DLHT was to seek extension of time to appeal against the decision of Bareko ward tribunal. Kondoa DLHT had already executed the judgment of Bareko ward tribunal when the applicant filed her application there, a reason why the Kondoa DLHT advised her to seek such time extension order from this court. To the contrary, the application before this court seeks extension of time to challenge the ruling of Kondoa DLHT instead of Bareko ward tribunal. The applicant says she has massive chance of winning her appeal. With respect, I see no such chance since the decision of Kondoa DLHT not to grant the order sought was discretionary and has been exercised judiciously. In terms of the ultimate goal of the applicant the grant of the current application is a procedural misdirection and inconsequential.

In the last clause of the affidavit, the applicant states her horror which is the reason for her struggle in court. She says if the

application is not granted it will be injurious to her and her family since respondent now wants to sell applicant's house at Bereko, Kondoa. It is unfortunate that the road the applicant has chosen to pass does not lead to the actual relief she needs. She seeks for extension of time to appeal against the ruling of Kondoa DLHT. Even if the ruling of Kondoa DLHT is successfully challenged, will not reverse the decision made by Bereko ward tribunal.

In the case of **The Registered Trustees of the Archdiocese of Dar es Salaam V. the Chairman Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006 the Court of Appeal in attempting to define the meaning of "sufficient cause" referred to the case of **Daphne Parry V. Murray Alexander Carson (1963) EA 546** where the court quoted **Law of Limitation**, 5th edition, by Rustomji who had this caution and guidance for courts:


"Though the court should no doubt give a liberal interpretation to the words "sufficient cause", its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led by sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant".

In this application, the applicant has shown neither good cause for delay in filing an appeal nor a good case for succeeding in her appeal.

In final analysis I find no merit in this application and hereby dismiss it. Since the applicant is in a precarious situation of fighting to rescue her house from being sold as pleaded, I make no order as to costs.

It is so ordered.




ABDI S. KAGOMBA
JUDGE
01/09/2021