

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISCELLANEOUS LAND APPLICATION NO. 158 OF 2017**

*(C/F Land Appeal No. 25 of 2017 originating from Appeal No. 8 of 2016 before the District Land and Housing Tribunal of Karatu at Karatu)*

**DAUDI BURA.....APPLICANT**

**VERSUS**

**YUSTINA SAFARI..... RESPONDENT**

**RULING**

**7<sup>th</sup> October, 2018**

**Mwenempazi, J.**

This is an application for extension of time within which the applicant would lodge an appeal out of time. It is brought under the provisions of Section 38(1) of the Land Disputes Courts Act, Cap. 216 R.E. 2002 and Section 14 (1) of the Law of Limitation Act, Cap 89 R.E. 2002.

In the chamber summons the applicant has also prayed that the cost be considered in the intended appeal and any other relief this court deems fit and equitable to grant. The chamber summons is supported by an affidavit of one Daudi Bura, the applicant.

In his affidavit the applicant states that he was the respondent in the Land case No. 9 of 2015 which was filed by the respondent in QurusWard Tribunal and the appellant in Land Appeal No. 8/2016 in the District Land and Housing Tribunal for

Karatu at Karatu. In both lower tribunal the applicant lost cases and so due to his dissatisfaction, he would like to pursue what he perceives to be his rights in the High Court by way of an appeal. However, time within which to appeal has lapsed hence this application.

The judgment in the District Land and Housing Tribunal was delivered on the 10<sup>th</sup> April, 2017. He was not supplied with the copies of judgment and decree. He applied to the Tribunal for the documents, the same were not supplied to him in time. As he was making follow up, he fell sick on 4<sup>th</sup> June, 2017 and was hospitalized for 10 days. Then, he asked a relative **Banga Nino Tlatla** to make follow up for him on the 9<sup>th</sup> June, 2017 and file an appeal. The relative misunderstood the request instead he went to the hospital where the applicant was hospitalized on the 12<sup>th</sup> June, 2017 when they made follow up together and secured the documents. Then, the applicant filed an appeal No. 25/2017. This was filed on the 13<sup>th</sup> June, 2017, three days after the expiry of time. It was withdrawn on 27<sup>th</sup> September, 2017. Hence applied for an extension of time to file appeal out of time. The applicant has averred that all the time he has been working to make sure he appeals on time and therefore delay is not a result of his negligence.

The respondent opposes an application by filing a counter affidavit. In it he alleges negligence on the part of the applicant. Parties prayed to be allowed to submit on an appeal by way of written submission. The court granted then leave on the 18<sup>th</sup> June, 2016. Both of them complied with the order of the court and filed their written submission in time.

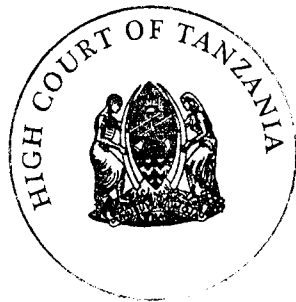
In his submission, the applicant has reiterated the evidence in the affidavit specifically paragraph 7 – 13 wherein he has accounted for the delay which has prompted this application. The law requires that there be a sufficient cause for the

court to grant an order for extension of time within which a person may file an appeal. As to what constitutes a sufficient cause is relative to each case.

The Respondent in her written submission has submitted that the applicant has failed to account for each a day of delay. She is of the view that the applicant was inactive for the whole month before sickness befell him. He is to blame and this court should not entertain such inaction. It should dismiss this application.

In my considered view, the applicant has shown circumstances sufficient to display efforts to pursue his right of appeal. I understand the circumstances of a person who is sick and hospitalized. He tried to be on time had it been not his sickness and on second attempt a relative who misunderstood him when he asked for the assistance. Otherwise, he would have met the goal to file on time. The applicant was incapacitated by sickness and that made him to delay for three days. He has accounted the delay. Under the circumstances I find that sufficient cause has been shown. Time for filing an appeal is enlarged. The applicant to file an appeal within 14 days from the date of this ruling.

It is so ordered.



  
T. MWENEMPAZI

JUDGE

22/10/2018