

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISCELLANEOUS LAND APPLICATION NO. 173 OF 2017

*(C/F Original Land Application no. 2 of 2016 District Land and Housing Tribunal of
Kiteto at Kibaya)*

BRYSON JAPHET MSEMOM.....APPLICANT

VERSUS

SALANAYA HEKI1ST RESPONDENT

MOHAMED SAID KIDEVU2ND RESPONDENT

RULING

19/10/2018

MWENEMPAZI, J.

The applicant has filed this application for an order of extension of time to file a land appeal against judgment and Decree of the District Land and Housing Tribunal for Kiteto, Application No.2 of 2016 which was delivered on 21st June, 2017. He is also praying for cost. He has brought the same by way of chamber summons and an affidavit. The provision cited are section 41(2) proviso of the Land Disputes Courts Act, Cap 216 as amended by The written Law (Miscellaneous Amendments (No.2) Act No.4

of 2016, section 41 (2) of the Land Disputes Court Act, Cap. 216, as amended reads as follows:-

“(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

Provided that; the High Court May, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days”

In the affidavit supporting the chamber summons the applicant has averred that he made an application for the copies of the judgment proceedings and decree immediately after the judgment had been delivered. He, however, was supplied with the same on the 25th July, 2017. For this he has attached a copy of an Exchequer Receipt (ERV No.411845311) dated 25/7/2017 as an evidence that he collected the documents. He then worked hard to make sure he files an appeal, only to be told by the Deputy Registrar that his appeal was time barred he has to file an application for extension of time to file an appeal. That was on 31st August, 2017. He has further averred that himself, his family and interests of Justice will suffer damages if this application will not be granted.

The respondents in their counter affidavit demanded that the applicant strictly proves the averment in paragraph 2,3 and 4 which in essence narrate what the applicant allege to have done after a judgment was delivered so that he files a competent appeal within time. They have further averred that the delay was due to the applicant's negligence.

On the 4th September 2018 this application was scheduled for hearing. All parties were unrepresented. They prayed for leave of the court to file their submission on appeal in writing. The court allowed them and a schedule was prescribed to them. All of them did comply to the order of the court.

The applicant in his written submission has submitted that it is a settled law that an order for extension of time should be granted where the application for extension of time does not constitute procedural abuse and where the respondent will not be prejudiced and or suffer any prejudice. He has referred the court to the case of Mobrama Hold Corporation versus Minister for Energy and Minerals and the Attorney General and East Africa Gold mines Ltd as Intervener [1998] TLR 425. It is equally true that the applicant must demonstrate a good cause and or sufficient cause. In this case the applicant referred the court to the case of Caritas Kigoma versus KGDWSI LTD. [2003] TLR 420 and Parin A.A Jaffer and Another Versus Abdulrasul Ahmed Jaffer and Two others [1996] TLR 110.

The applicant further submitted that after the judgment had been delivered he applied to be supplied with proceedings and judgment and the documents were ready on 18th July, 2017. But he was not informed. When he accidentally came to know that they were ready when he was following up.

In his submission the applicant submit that he is pretty sure that by the time he went to file an appeal on 31st August, 2017 he was within time had it not been for the Deputy Registrar to refuse admitting his appeal on

the reason it was time barred. He has submitted further that, only 36 days had elapsed counting from July, 2017 the day he collected copies of judgment, decree and proceedings. Also, on 31st August, 2017 it was only forty three (43) days only counting from the date the documents were ready for collection, that is 18th July, 2017. As he had been advised by Deputy registrar to file an application for extension of time to file an appeal, he had to look for a lawyer to assist him to prepare the necessary documents. That is why he filed this application on 20th October, 2017.

The Respondents on their part filed a joint written submission. In it they are submitting that the application is founded on the Applicant's own negligence of collecting the copies of Judgment, decree and proceedings on time. There is no such legal requirement that the tribunal should write to the applicant to informing him that the copies of Judgment decree and proceedings are ready for collection.

The applicant has failed to show good cause as to why he delayed. He has even failed to explain and or account those ten days from 25th July, 2017 when he collected the document. He applicant has failed to give material to the court so that the court would gauge and consider his delay and grant an extension. In that way the respondent referred the case of Regional manager, TANROAD & KAGERA VS. RUAHA CONCRETE CO. LTD., Civil Application no. 96 of 2007 Court of Appeal of Tanzania, at Dar es Salaam (unreported).

The applicant is wrong to submit blaming the Deputy Registrar for his delay. This is undignified attempt as it was held in the case of Regional manager Tanroads above.

The respondents have submitted further that, the applicant claims that since he is not skilled in law he had to look for services of the lawyer to file a competent application. He is in this way, using ignorance of law as an excuse. This has never been a defence in courts of law. The same cannot be said to be a sufficient reasons to enable this court to execute. Its discretion to extend time within which to file an appeal.

An order for extension of time is not a constitutional right rather it is a judicial discretion and the same is issued to the applicants upon showing good cause or sufficient reasons the condition which has not been met by the applicant.

Also, lack of fund is not a sufficient reason for extension of time. Further to that the affidavit sworn by the applicant has not shown anything to prove that the applicant was prevented by financial hardships. The respondent therefore pray for this application to be dismissed as it prejudices the Respondents for creating an endless litigation.

It is a settled principle of law that if an application for extension of time is to be granted there has to be sufficient cause for the delay. The reasons have to be shown in the affidavit in support of the application. Submissions are not evidence. They are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments

on the applicable law and not intended to be a substitute for evidence. Refer the *Registered trustees of the Archdiocese of Dar es Salaam vrs. The chairman of Bunju Village Government and 11 others*, civil Appeal No. 147 of 2006 Court of Appeal of Tanzania at Dar es Salaam (unreported).

In the affidavit the applicant has avered that the impugned judgment was delivered on 25th June, 2017. He obtained the documents on 25th July, 2017. He has not given any explanation as to why he delayed to file an appeal save for the reason that he was supposed to file a sound and competent land appeal and only few days were remaining to be within time. In paragraph 4 he blames the Deputy Registrar as the one who told him that he is time barred.

However in the written submission that is where he explains that he had financial hardship. That however is not a sufficient cause to warrant the court to extend time. In the case of *Safari Petro Vs. Boay Tlemu*, CAT Civil Application no. 320117 of 2017 at Arusha, the court held:-

In law, "*where there has been a delay in doing any act in compliance, with the requirement of law, each day of the delay has to be accounted for*"

The court emphasized by a quote from the case of *Bushiri Hassan Vs Lativa Lukio Mashayo*, Civil Application No.3 of 2007, where the court stated.

"*Delay of even a single day has to be counted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken*".

It is worthy to be observed that the applicant, relied much on his submission to explain and or account for the delay instead of tendering the evidence through an affidavit under the circumstances this court finds it the application lacks merit for the court to exercise its discretion and extend time as prayed by the applicant. Since the applicant has failed to account for the delay, he has as well failed to more the court to exercise its powers to extend time. This application therefore fails. It is dismissed with costs.

It is ordered accordingly

SGD: T. MWENEMPAZI

JUDGE

19/10/2018

I hereby certify this to be a true copy of the original



A handwritten signature in black ink, appearing to read "S.M. Kulita".

S.M. KULITA

DEPUTY REGISTRAR

ARUSHA

30/10/2018