

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MTWARA)**

**AT MTWARA**

**MISC. LAND APPLICATION NO 22 OF 2019**

*(Arising from Land case No. 72 of 2018 from District Land & Housing  
Tribunal of Mtwara)*

**ZUHURA ALLY HASSAN .....APPLICANT**

**VERSUS**

**AMINA ALFANI NAMMANJE.....RESPONDENT**

**RULING**

*Hearing date on:13/2/2020*

*Ruling date on: 25/2/2020*

**NGWEMBE, J:**

The applicant lodged this application seeking an extension of time to lodge an appeal out of time. Briefly, the genesis of this application traces back from the judgment of the District Land and Housing Tribunal for Mtwara delivered on 14/02/2019. Being aggrieved with that judgment, the

applicant preferred an appeal to this court, but found herself out of time, hence this application for extension of time, which was lodged in this court on 8<sup>th</sup> November, 2019, equal to almost nine (9) months from the date of judgement.

According to the chamber summons, the applicant moved this court under section 14 (1), (2) of the Law of Limitation Act Cap 89 R.E. 2002 read together with section 95 of Civil Procedure Code Cap 33 R.E. 2002. The chamber summons is supported by an affidavit of the applicant. In turn the application is resisted by the respondent who filed a counter affidavit.

All pleadings being completed, this court fixed for a hearing date of this application. On the hearing date, unfortunate both parties were not represented by learned advocates, hence, both have limited contributions to this application. The applicant simply asked this court to grant an extension of time so that she can appeal against the judgement of the District Land and Housing Tribunal. That the reason for delay was due to her eye sickness, which reason unfortunate was not pleaded in the affidavit. Also did not produce any medical sick sheet to justify that reason of sickness. All in all, I understood that she is just looking for a chance to exercise her constitutional right to appeal to the High Court.

In turn the respondent objected the application by submitting that the applicant did not suffer any eye sickness. The two are living in the same village and they are neighbours, therefore, the two know each other and

the applicant was health all the time and she did not suffer any eye sickness. She rested her submission by a prayer that the application be denied for lack of reasonable grounds to extend time.

I would commence my consideration by advancing the most celebrated legal principle that extension of time is purely court's discretion. The court has unlimited powers, so to speak, to extend time, so long there is a satisfactory reason to exercise that discretion. More so, it is a cardinal principle of law, that though the court has discretionary powers to grant or refuse to grant extension of time, yet that powers must always be exercised judiciously. Therefore, the duty of the applicant is to provide strong reasons to convince the conscience of this court to invoke its discretionary powers to extend time. Failure to do so, the court jealously cannot invoke its discretionary powers to grant extension of time.

More so, when considering to the application for extension of time, usually, the court takes into account all relevant factors, which might have hindered the applicant from appealing to the superior court within time. In the case of **Mbogo Vs. Shah [1968] EA 93** the court held:-

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. Those factors include the length of the delay, the reason for the delay, whether there is an arguable case on appeal and the degree of prejudice to the applicant if time is not extended".*

I would buy the guidance provided for in that judgement, that there is no single reason which may satisfy the court to extend time rather, is a combination of many reasons. In respect to this application, both parties are not represented by learned advocates, even their affidavits and counter affidavit both did not articulate facts and advance relevant reasons for delay. Likewise, the respondent objected the application generally without advancing good reasons to convince the court to reject the application.

In such circumstances, I would take refuge and guidance from the mother law (Constitution of the United Republic of Tanzania) specifically **Article 13(6) (a)** which is quoted hereunder:-

*"Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa mahakama au chombo kinginecho kinacho husika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikiiizwa kwa ukamilifu, na pia haki ya kukata rufaa au kupata nafuu nyingine ya kisheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika".*

Unofficial interpretation is that, the article is centered on the right to be heard and the right to appeal to the superior court to whoever aggrieved by a decision of trial court. Undoubtedly, appealing to the superior court is a Constitutional right. To the best such right should be accompanied with right for extension of time, if such delay was caused by sufficient reason. To deny extension of time is equal to denying the applicant a Constitutional right to appeal to a superior court.

So, long the applicant rightly, cited an enabling provisions of law, that is, **section 14(1) of The Law of Limitation Act [Cap 89 R.E 2002]**, and since the gist of the dispute is related to boundaries of a piece of land, I would, with no hesitation exercise my discretionary powers to grant extension of time with a view of permitting the two disputants to be heard by a court of record. Secondly, both parties are not only represented in this court, also they seem not to understand why they are here in court. In such circumstances, courts must not be strict to the applicable legal rules in dealing with such a situation, rather better look for a substantive justice to the parties and if possible give parties another chance to be heard on their disputes.

In totality, I accordingly grant the prayer for extension of time and order the applicant to execute the intended appeal within twenty (20) days from the date of this ruling.

**Order accordingly.**

**Dated at Mtwara this 25<sup>th</sup> February, 2020**



**P. J. NGWEMBE**

**JUDGE**

**25/2/2020**

**Court:** Ruling delivered at Mtwara in Chambers on this 25<sup>th</sup> day of February, 2020 in the presence of both parties.



A handwritten signature in black ink, appearing to be "P.J. Ngwembe", written in a cursive style.

**P.J. NGWEMBE**

**JUDGE**

**25/2/2020**