

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. LAND APPLICATION NO.23 OF 2020**

(Originating from the District Land and Housing Tribunal for Lindi at Lindi, Land  
Application No.9 of 2018)

**AHMAD SAID CHINGALA.....APPLICANT**

**VERSUS**

**YUSUPH MOHAMED MKWACHA.....RESPONDENT**

**RULING**

27 May & 3 June, 2021

**DYANSOBERA, J.:**

In this application, the applicant, Ahmad Said Chingala, the applicant has moved this court by way of Chamber Summons made under section 41(1) of the Land Disputes Courts Act, Cap 216 R.E 2002 and any other enabling provision and supported by an affidavit affirmed by the applicant. The applicant is seeking an order granting him extension of time to file an

appeal against the decision of District Land and Housing Tribunal for Lindi at Lindi in Land Application No.09 of 2018 delivered on 13.3.2020.

The application by applicant has been opposed by the respondent who has never appeared before this court though he filed his counter affidavit and a notice of preliminary objection on point of law.Indeed, this court failed to hear the raised preliminary objection due to the fact the respondent has never appeared and also no notice has been filed in this court for his absence. In view of that reason this court realised that the respondent was unaware of what brought in court and therefore on 23.3.2021 this court ordered this matter to proceed *exparte*.

According to the applicant's Chamber Summons and affirmed affidavit, the main ground upon which his application has been based is featured in paragraph 5,6 and 7 of the affidavit of the applicant and which may be paraphrased as follows:

"5. That I expected to receive the copy of judgment on the date when the Judgment was delivered or as early as possible from the Court unfortunately it wasn't ready and I made a follow up on several times so that I could have it before expiration of time within which I

could file an appeal but ended in vein. Attached herewith is a letter I wrote to the Tribunal asking for a copy of Judgment marked as annexure "ASC-1.

6. That, I was supplied with a copy of Judgment on 28<sup>th</sup> August, 2020 attached to this application and marked as annexure ASC-2.

7. That the reason adduced by the Tribunal for late supply of a copy of judgment was that, the Hon. Chairman, R.E. Mjanja was at maternity leave immediately after the date when the judgment was delivered up to when forty five days the time within which I could file an appeal had elapsed".

At the hearing of this application on 27.5.2021, the applicant appeared unrepresented and fended himself. The applicant submitted that he delayed to get a copy of impugned decision thus he prayed to be granted with an order of extension of time so that he may file his appeal out of the prescribed statutory time.

At this juncture I find it appropriate to consider whether the applicant has shown good cause for him to be granted the sought order. As shown above, according to the applicant's affidavit, the cause of his delay in filing

the intended appeal within the prescribed period is that he was not supplied with a copy of the intended impugned judgment of the trial tribunal due to the fact that the learned Chairperson one R. E. MJANJA was at her maternity leave. Now, whether such reason for the applicant's delay to lodge his intended appeal within the prescribed statutory time is a good cause. Unfortunately, no law in our jurisdiction which has defined or attempted to define what does good cause entails. But there are some precedents of the defunct East African Court of Appeal and the Court of Appeal of Tanzania which have defined in extensor the term good cause. For instance, in the case of **Shanti v. Hindochie and Another** [1973] E.A. 207 defined good cause to mean:-

*"... the more persuasive reason ...that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason."*

As far as the above the Erstwhile Court of Appeal for East precedent is concerned on issue that more persuasive reason is not the only reason for granting an order for extension of time but the Court of Appeal of Tanzania has established other factors which the court exercising discretionary power of granting extension of time of either legal remedy being sought for

must consider the following factors,(1) that the applicant must account for all the period of delay;(2) the delay should not be inordinate;(3) the applicant must show diligence and not apathy negligence or sloppiness of the action that he intends to take;(4) if the Court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged. These factors were stated in the most famous case of **Lyamuya Construction Company Limited v. Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil application No. 2 of 2010 (unreported).

Being aware of the meaning of good cause and factors being used to consider the granting or not granting the extension of time. I now turn to the pertinent issue as raised herein above. The applicant's reasons for delay to lodge his intended appeal are featured in paragraphs 5, 6 and 7 of his affidavit as I amplified herein above. I have gone to annexure "ASC-1" which is the letter of applicant written to the Chairperson of the District and Housing Tribunal for Lindi at Lindi. The letter was written on 13.3.2020 and the trial Tribunal received it on 13.3.2020. Whereas, annexure "ASC-2" is the intended impugn judgment which was delivered on 13.3.2020 but

was certified on 29.6.2020. Despite that, the decree was not signed on the stamp of the certification. Though no proof from the applicant that madam Chairperson was on her maternity leave but there is very convincing situation that the applicant was very enthusiastic to obtain the certified copy of the intended judgment and its decree on time since he lodged his letter requesting the same on the very date of the delivery of judgment. And the same letter was received on the same date by the trial tribunal. From 13.3.2020 to 29.6.2020 when the intended impugn judgment was ready for collection by the applicant who sought it for the purpose of lodging an appeal to this court makes a total of 106 days. It might be very true that madam Chairperson was not in the office as stated by the applicant on maternity ground. On the basis of that ground I find that it could be difficult for the applicant to account for each day his delay to the day he received the copy due to nature of the reason which impeded him. Also, I am of the firm view that the delay by the applicant, though inordinate, has, however, shown due diligence and not apathy, negligence or sloppiness of the action that he intends to take. In addition, the delay by the applicant to lodge his intended appeal to this court was greatly

attributed by the trial tribunal's .... as evidenced by annexure "ASC-1" and annexure "ASC-2".

In the light of the afore said reasons, I am satisfied that the the applicant has shown good cause for the delay. In the event, I find that the application has merits and should be granted.

I do hereby extend time for the applicant to appeal out of time to this court within forty five (45) days from the date this ruling is delivered. No order as to costs.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W.P. Dyansobera**

**JUDGE**

**3.6.2021**

This ruling is delivered under my hand and the seal of this Court this 3<sup>rd</sup> day of June, 2021 in the presence of the applicant and in the absence of the respondent.

Rights of appeal to the Court of Appeal of Tanzania explained.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W.P. Dyansobera**

**Judge**