IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LAND DIVISION]

AT ARUSHA

MISC. LAND APPLICATION NO. 98 OF 2020

(Originating from the District Land and Housing Tribunal for Arusha at Arusha, in Misc. Application No. 320 of 2019)

ZACHARIA FRANCIS MBATA..... APPLICANT

VERSUS

CRDB BANK PLC.....1ST RESPONDENT

NKAYA COMPANY LIMITED..... 2ND RESPONDENT

FLOTEA AUGUSTINO TARIMO..... 3RD RESPONDENT

RULING

22.03.2022 & 31.05.2022

N.R. MWASEBA, J.

The applicant before this Court is seeking to be granted extension of time within which to file a revision out of time against the decision of the District Land and Housing Tribunal (Tribunal) in Misc. Application No. 320 of 2019. The application was supported by a sworn affidavit of the

applicant himself. On his side, the 3rd respondent filed Counter affidavit objecting the application.

At the hearing of the application which was conducted by way of written submission, the applicant was present in person while the 3rd respondent was represented by Mr. Ombeni Kimaro, Learned Counsel. The 1st and 2nd respondent never entered appearance for the reasons best known to themselves regardless that they were duly served.

Supporting the application, the applicant started by citing the case of **Lyamuya Construction Company Limited Vs Board of Trustees of Young Women's Cristian Association of Tanzania**, (Civil Application No. 2 of 2010) (2011) TZCA 4 (03 October 2011) where the court analysed the factors to be considered when granting extension of time.

He added that the court has discretion to extend time upon sufficient cause being manifested by a party. The reason for being late to file an application for revision are envisaged from paraph 8 and 9 of the affidavit supporting the application where the applicant alleged to have filed an application via online registration within the time but the same was rejected by the Deputy Registrar on 30.10.2019 for the reason that the same was not signed by the applicant. Thereafter, he filed another application on the same date which was accepted on 04.11.2021 and he

was given control number on 09.11.2021. That is when he decided to file an application for extension of time to file the intended application for revision.

Further to that, the applicant submitted that, as elaborated herein the delay was caused by the system and the late reply due to network system and not his own negligence. He cited **Rule 24 (1) of the Judicature and Application of Laws (Electronic Filling) Rules**, G.N 148 of 2018 which allow the exclusion of time when the electronic filing system is not in operation. It was his further submission that, all the requirement from **Lyamuya Construction's** case were met by the applicant and if the application will not be granted the applicant will suffer irrepealable since his family house was auctioned by the 1st respondent illegally.

Apart from that, the applicant also alleged under paragraph 12 and 13 of his affidavit that there was illegality which the court need to address. The said illegality was the act of the counsel for the applicant to withdraw a case without the client's instruction as per annexure ZK-1 and when the applicant wanted to restore the said application it was dismissed by the tribunal as it found itself functus official. He cited the case of **Principal Secretary, Ministry of Defence and National Service Vs Devram P. Valambhia** [1992] TLR 185 where the court held that illegality

amounts to sufficient cause for extending time. Further to that, since all the application at the trial tribunal ended on technicality the applicant was never given a right to be heard which is a fundamental right a per **Article 13 (6) (a) of the Constitution of the United Republic of Tanzania**.

Thus, based on the reasons adduces in his submission and since there is overwhelming chances of success in his intended revision, he prayed for the application to be granted.

Contesting the application, Mr.Kimaro on behalf of the 3rd respondent submitted that, in order to be granted extension of time, a good cause must be advance by the one seeking for that order. Apart from the reason that a revision is not a proper way to be preferred by the applicant since there is a chance of filling an appeal, nothing was advanced to move the court to grant the order sought. The applicant was late for more than 68 days when he was filling this application, since the last decision of the tribunal was delivered on 04.09.2020 and not 17.09.2020 as alleged by the applicant and all those days were not accounted for.

The applicant failed to account days of delay as required by the cited case of **Lyamuya Construction Company Ltd** (supra) which is fatal in this application. As it was held in a case of **Registered Trustees of the Archdiocese of Dar e Salaam Vs The Chairman Bunju Village**

Government and 11 Others, Civil Appeal No. 147 of 2006 (Unreported) at page 7 that reasons for the delay must be reflected in the affidavit. He added that, the plaintiff alleged that his application which was filed on time was rejected by the Deputy registrar without bringing any proof thus it was his only negligence for not ensuring the application was filed in accordance with the requirement of the law. Further to that, no copy of the control number receipt was attached to prove it was issued on 09.11.2020, hence the same is not sufficient reason because the applicant knew that he was out of time which is not sufficient reason to extend the time as sought. He further cited the case of **Paul Martin Vs Bertha Andersons**, AR, Civil Application No. 7 of 2005 (Unreported) and **Shelina Jahangir & 4 Others Vs Nyakutonya N.P.F Company Limited** (Civil Application NO. 47 of 2020) TZCA 25 (10 February,2022) where the court insisted that negligence is not a sufficient reason for extension of time.

Mr. Ombeni submitted further that, although the applicant may claim he is a layman, the law is very clear that ignorance of law is not a defence and the court has been warned to do away with sympathy rather than dealing with a sufficient cause (See the case of **Archdiocese of Dar es Salaam's case** (supra). He avers further that even if the delay was caused by the counsel or by the wrong filed application, the same does

not amount to sufficient cause, as it was held in a case **of Fortunatus Masha Vs William Shija and Another** (1997) TRL 154.

More so, he added that there was no illegality in the previous application at the trial tribunal, due to the fact that the applicant was aware of all the decisions and had all the necessary documents. The previous application was withdrawn following the prayer of the applicant (See annexure ZK-1) and the other party did not object. The said application was withdrawn after a Preliminary Objection which was raised and that a court cannot be moved by Section 95 of the CPC after the Preliminary Objection was raised and accepted. The same position was maintained in the case of **Tanzania Electricity supply Company (TANESCO) Vs Independent Power Tanzania (Ltd) IPTL and 2 Others** (2000) T.L.R 324.

He cited Rule 24 (1) of GN 148 of 2018 and avers that the delay was not caused by the system but his only negligence and the system was not complained anywhere in his affidavit and there is no affidavit from the registry's office to prove the allegation. Thus, the court cannot believe mare words from the applicant. Regarding the issue of prejudice, it is the 3rd respondent who will be prejudiced since he is living in the disputed house and the title has already been transferred to him. Though the applicant is now blaming his advocate but he was present when the

application was withdrawn at the tribunal and as it was held in **Arbuthnot Export Services Ltd Vs Manchester Outfitters**, Nairobi High Court, Civil Case No. 2252 of 1989 (Unreported) that once a party chooses an advocate, what an advocate does, binds him.

It was his further submission that the applicant was not heard on merit in Application No. 156 of 2018 as he was the one who withdrew the application. It is provided under **Order XXIII Rule 3 of the CPC** that once a party withdraw from a suit; he abandons his claim and he shall be precluded form instituting a fresh suit on the same matter. The same was held in a case of **Jinning – Bramly Vs A. and Contractors Ltd and Another** (2003) 2 EA 452 and the cited case of **Yusufu Same and Another Vs Hadija Yusuph**, (1996) TLR 347 is distinguishable since the same has already been revised in the case of **Shelina Jahangir & 4 Others Vs Nyakutonya N.P.F Company Ltd**, Civil Application No. 47 of 2020 TZCA 25 (10 February, 2022. In the end he prayed for the application to be dismissed with costs.

In his brief rejoinder, the applicant reiterated what was submitted in chief and added that being a layman the applicant was not aware to some of the procedures but the same does not mean he acted negligently. As for the issue of illegality the same was shown by the applicant on the face of

record there was no need to be drawn in a long process and that in his long submission counsel for the 3rd respondent dealt with the main application rather than an application for extension of time, the matter which was before the court.

He added since the present application is just for extension of time the result of the main application does not matter at this stage as it was held in the case of **Mary Rwabizi t/a Amuga Enterprises vs National Microfinance Bank, Plc**, Civil Application No. 378/01 of 2019 (Unreported). Further to that even if the house in dispute is now in the hands of the 3rd respondent it is the duty of the court to determine whether the said transfer was lawfully or not, thus he maintained his prayer for the application to be granted.

Having considered the arguments from both parties, the main issue to be determined by the court is whether the applicant did establish sufficient cause to move this court to grant the application.

Powers to grant applications for extension of time are vested to the court, such powers are discretionary but needs to be exercised judicially which means that before granting prayers for extension of time the court must be satisfied that sufficient cause for the delay has been well established by the applicant.

The term good cause is not defined in the Land Disputes Courts Act [Cap 216 R.E. 2019], but generally good cause is a legal term denoting adequate or substantial grounds or reason to take a certain action or to fail to take an action prescribed by law or court or other legal body. That being the case, for the applicant to succeed in an application for extension of time he must demonstrate substantial grounds or reasons which prevented him from filing his appeal or revision within the period prescribed by law.

In **FINCA (T) Ltd and Another vs. BONIFACE MWALUKISA**, Civil Application No. 589/12 of 2018 (CAT, Unreported – Iringa) the ruling of which was delivered on 15 May 2019, the Court of Appeal held inter alia that:

> *"It is settled that where extension of time is sought, the Applicant will be granted, upon demonstrating sufficient cause for the delay. Conversely, it is also well settled that the sufficient cause sought depends on deliberations of various factors some of which revolve around the nature of actions taken by the Applicant immediately before or after becoming aware that the delay is imminent or might occur"*

Further to that in **Lyamuya Construction Company Ltd** (supra), the court has established guideline to be met before the application of this nature is granted. The said guidelines are:

(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.

In our present application, in his affidavit supporting the application and, in his submission, the applicant averred that the delay was neither caused by his negligence nor that he was inordinate but it was caused by the online electronic system. He also alleged that there are some illegalities in the said decisions which need to be determined by the court and that his intended revision has an overwhelming chance of success.

Having gone through the entire records of this case, I have noted that the decision of the District Land and Housing Tribunal (Tribunal) in Misc.

Application No. 320 of 2019 was delivered on 8/9/2020 and the present application was filed on 10.12.2020 the applicant was late for more than 32 days as he was supposed to file his revision within 60 days from the day of the trial tribunal's decision. Although the applicant alleged that he was given control number on 09.11.2020 nothing was submitted to prove the same. And nothing was submitted to show that during the 60 days what was done to exercise his right of revision if any.

In the case **Bushiri Hassan Vs Latifa Lukio Mashayo,** Civil Application No.3 of 2007 and in **Karibu Textile Mills vs Commissioner (TRA),** Civil Application No.192/20 of 2016 the Court of Appeal held that:

> "*Delay, of even a single day, has to be accounted for otherwise there would be no proof of having rules periods within which certain steps have to be taken*"

In our present application the applicant was late for more than 32 days without accounting the said delays. More so, though he blamed the registry and its online system nothing was submitted to prove the allegation as it was held in a case of **David Mwakikunga Vs Mzumbe University, successor in Title of IDM Mzumbe**, Civil Reference No. 12 of 2004 (unreported). His Lordship Honourable Kaji, J.A ruled under page 6, 7 and 8 as follows:

"From these, together with the applicant's Oral submissions, it is clear to us that, the applicant is blaming the Civil Registry staff of the High Court for misleading him that the copy had first to be endorsed by the registrar before it was served on the respondent, and that the registry never returned to him the copy which he would otherwise have served the respondent. ***There is neither affidavit nor evidence of any kind from the registry office confirming the same****... whatever the case, in our view, none of these amounts to sufficient ground for his failure to serve the respondent with the copy of the letter.* (Emphasis added).

Based on the cited authority, without any proof from the registry officer proving that he was given control number on 09.11.2020 and that there was a problem with the online system regarding admission of the applications, the applicant's allegation will just be a mere word from the bar.

As for the issue of illegality, the Court of Appeal in the case of **Lyamuya Construction Company Limited** (supra) elaborated widely how illegality may be raised and relied upon by a party seeking extension of

time to appeal. I take liberty to quote the relevant part of the reasoning of the court as hereunder:

> "*Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view be said that in Valambhia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The court there emphasized that such a point of law must be that of sufficient importance and* ***I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; nor one that would be discovered by a long drawn argument or process***" [Emphasis added].

Considering the cited authority, it is quite clear that the issue of illegality, when raised as a ground for extension of time must be of sufficient importance and seen on the face of record not to require long drawn argument or process. In the instant application, the applicant only alleged that there is an issue of illegality on the decision of trial tribunal without indicating the alleged illegality, which I find it not sufficient enough to move the court to grant the application.

And regarding the issue of overwhelming chances of success, the same has been held in numerous cases as in **Tanzania Posts & Telecommunications Corporation Vs M/S BS Henrita Supplies** (1997) TLR 141 at page 144, where a single judge of this Court, (Lubuva, J.A., as he then was) observed as follows; -

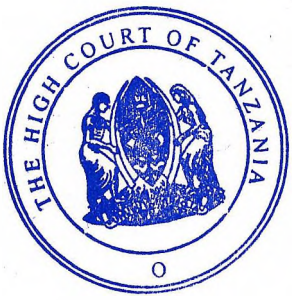
> *"It is however relevant at this juncture, to reflect that this Court has on numerous occasions taken the view that the chances of success of an intended appeal though a relevant factor in certain situations, it can only meaningfully be assessed later on appeal after hearing arguments from both sides."*

Thus, the same principle will be applied in our present application that's its better the chances of success be determined later if this application will succeed not at this stage.

Based on the reasons stated herein, this court finds that the applicant has failed to adduce sufficient reasons for the delay to file the present application and therefore I hereby dismiss this application with no order as to costs.

Order accordingly.

DATED at **ARUSHA** this 31st day of May, 2022.



N.R. MWASEBA

JUDGE

31.05.2022