

IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA
MISC. LAND APPLICATION No. 02 OF 2022

RWEYEMAMU ANATORY BINAMUNGU..... APPLICANT

VERSUS

1. ASSISTANT REGISTRAR OF TITLES }RESPONDENTS
2. THE HON. ATTORNEY GENERAL }

RULING

Last Order date: 07.02.2022

Ruling Date: 11.02. 2022

M. MNYUKWA, J.

In the present application, the applicant is praying for an extension of time to file an appeal out of time against the decision of the Assistant Registrar of Titles of Mwanza Registry dated 26th July 2021. The applicant filed his application under certificate of urgency along with chamber summons supported by an affidavit sworn by him. The application is preferred to this court under section 68(e) of the Civil Procedure Code, Cap 33 [RE: 2019], section 14(1) of the Law of Limitation Act, Cap 89 [RE:2019] and section 102(1) of the Land Registration Act, Cap 334

[RE:2019]. Among other documents, the applicant attached an affidavit regarding returning of transfer of documents sworn in by Ms. Lidya Martine, the learned advocate.

On the other hand, neither the first nor the second respondent responded to the applicant's application by filing an affidavit in reply.

The brief background of the matter as could be traced from the record is that the applicant claimed to have bought a landed property described as plot No 1134 Block "A" with a certificate of Title No. 74879 LR Mwanza, at Zenze within Ilemela Municipality from the registered legal owner one Calister Castory Nyakunga. The sale of the said landed property for the sum of Tsh 18,000,000 was free from any impediment and the spouse consent was secured before completion of the sale agreement. Thereafter, the applicant started the transfer process by having in place a valuation report and paid all government fees and presented the transfer document to the Registrar's office at Mwanza with the aim of transferring the ownership from the registered owner to him.

In the process, the applicant found that the seller's spouse had registered interest over the same landed property which block the transfer process. This resulted the Assistant Registrar of Titles to issue a thirty days' notice sometimes in June 2021 to the caveator informing his desire



to effect the transfer. It appears that in between there was no communication that was done to the applicant on the status of transfer until 17th December 2021 when it came to his attention that the Assistant Registrar of Titles has returned the transfer documents in respect of the said landed property. The record shows that the applicant was aware of that information through his advocate that the document were returned vide a letter dated 26th July 2021 and he was out of time to file an appeal before this court.

During the hearing, the applicant was represented by Mr. Melkizedek Gunda and Mr. Silas John, learned advocates while the respondents were represented by the senior state attorney, Ms. Subira Mwandambo. The matter was argued orally.

Submitting for the application, the applicant's counsel sought leave of the court to adopt the two-affidavit accompanied the application. One affidavit being sworn by the applicant and the other sworn by the learned counsel Lydia Martine to form part of his submission. He avers that the applicant was not aware that the documents in respect of Plot No 1134 Block A comprised in a certificate of Title No 74879 LR Mwanza at Zenze within Ilemela Municipal has been returned and that the Assistant Registrar of Titles could not proceed with the transfer.



The counsel for the applicant went on that the above information was received by the applicant on 17/12/2021 through his advocate, one Ms. Lydia Martine. The learned counsel added that the applicant soon acted on the matter of which on 28/12/2021 he filed the present application before this court and that the time of appeal against the decision of the Assistant Registrar of Titles has already lapsed since the same was supposed to be filed within 90 days as per the requirement of section 102(1) of the Land Registration Act, Cap 334 R.E 2019.

The counsel for the applicant further submitted that the respondents will not be affected in any way if the present application will be granted.

The counsel for the applicant supported his application for extension of time by referring to the decision of the Court of Appeal showing the circumstances for a court to grant extension of time. He referred to the case of **Rashid Abiki Nguwa vs Ramadhan Hassan Kuteya and National Microfinance PLC**, Civil Application No 431 of 2021 quoted with approval the decision of **Tanga Cement Company Limited Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No 6 of 2001.



He finalized his submission insisting that the present application met the standard of the Court of Appeal set out in the above case and therefore prayed the application for extension of time to be granted and on granting the application he prayed the court to consider the provision of section 102(1)(a) of the Land Registration Act, Cap 334 RE: 2019.

Responding to the applicant's submissions, Ms. Subira Mwandambo the senior state attorney admitted to have received the present application on 01/02/2022. She submitted that after going through the applicant's application, the affidavit and upon receiving the attachment from the Assistant Registrar of Titles, she was satisfied that the information of returning the documents by the Assistant Registrar of Titles to the applicant was not communicated and there was no proof of service to that effect. She went on to state that in that circumstances the applicant could not be able to file the appeal within the prescribed time stated by the law. She added that, for the sake of justice they are not objecting the applicant's application since no person will be affected if the same will be granted.

I have given careful consideration to the submissions of both parties and upon going through the affidavits and the attachment submitted by the applicant, there is no dispute that the applicant was not properly served as it was admitted by the learned counsel of the respondents. I,



therefore, find the central issue for consideration and determination is whether sufficient cause has been advanced to warrant the extension of time sought by the applicant.

It is an established principle that the decision to grant or not grant an order of extension of time is within court discretion. It all depends upon a party seeking an order to adduce sufficient cause that prevented him from doing what he was supposed to do within time. Section 14(1) of the Law of Limitation Act, Cap 89 R.e 2019 provides that: -

"Rule 14. -(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause extend any period of limitation for the institution of an appeal or application..."

The position of the law is clear and settled when it comes to granting an order for extension of time to appeal. There is a surfeit of legal authorities in this respect. In the case of **Benedict Mumelo vs. Bank of Tanzania** Civil Appeal No. 12 of 2002 the Court of Appeal of Tanzania decisively held;

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."



It is worthy to note that what amount to a good cause has not been defined by the law as it depends on the circumstances of each and every case.

I have revisited the applicant's affidavits and going through his submissions to find out what transpires to this application. Going to the records, I find this application is for an extension of time to file an appeal out of time and has been brought up after the time to file the appeal against the decision of the Assistant Registrar of Title to have lapsed.

The governing law in our present application that is the Land Registration Act, Cap 334 R.e 2019 specifically under section 102(1) requires any person aggrieved by the decision, order or act of the Registrar may appeal to the High Court within three months from the date of that decision, order or act.

As it was rightly submitted by both parties and backed up with the available record which shows that the applicant was not aware of the decision of the Assistant Registrar of Titles when the same was issued sometime in June 2021 as he was not properly served with that decision. Instead, he became aware on 17/12/2021 and he acted promptly by filing the present application before this court on 28/12/2021.



The above facts guide my determination of the existence of good cause on the part of the applicant as he acts expeditiously on filing the present application. The record vividly suggests that the applicant had filed the present application within 11 days after being aware of the fact that his documents were returned by the Assistant Registrar of Titles.

The act of expeditiously filing the application has been pointed out by the highest Court of the land in our jurisdiction that is the Court of Appeal of Tanzania in the case of **Royal Insurance Tanzania Limited vs Kiwengwa Strand Hotel Limited**, Civil Application No 116 of 2008 (unreported) quoted with approval in the case of Sebastian **Ndaula vs Grace Rwamafa** (legal personal Representative of Joshua Rwamafa), Civil Application No. 4 of 2014 CAT at Bukoba (unreported) it was stated that:

"It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time act very expeditiously and that the application has been brought in good faith."

Guided by the above decisions of the Court of Appeal and the circumstances of the present case, at this juncture, my mind is settled that the applicant managed to show good cause for an extension of time to file an appeal out of time to this Court. As it was rightly submitted by the counsel for the respondents, for the sake of justice and for the purpose of



attaining substantive justice to both parties, I exercise my discretion to grant an extension of time to the applicant as prayed in the chamber summons.

In the upshot, I find this application has merit, and the applicant is granted a period of 45 days to file his appeal before this court. I make no order as to costs.

It is so ordered.



M. MYUKWA
JUDGE
11/02/2022

Ruling delivered on 11/02/2022 in the presence of parties' counsel.



M. MYUKWA
JUDGE
11/02/2022