

TANZANIA / JUDGMENT

furahini konga vs dama jimoka 2 others 2023 tzhc 20590 31 august 2023

COURT
TZHCDECIDED
31 August 2023

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA (MBEYA SUB - REGISTRY) AT MBEYA MISC. LAND APPLICATION NO. 93 OF 2022 (Originated from the Land Application No. 33 of 2021 of the District Land and Housing Tribunal for Mbari/i at Rujewa)

FURAHINI KONGA..... APPLICANT VERSUS DAMA
JIMOKA..... 1st RESPONDENT JIMOKA
MWASEMA..... 2nd RESPONDENT ANTHONY
MWANJALA..... 3rd RESPONDENT

RULING

Date of last order: 11/07/2023 Date of Ruling: 31/08/2023 NDUNGURU, J. The applicant, Furahini Konga, through the services of Mr. Philip Mwakilima, learned advocate, brought the present chamber summons under Section 41(2) of the Land Dispute Courts Act, (Cap. 216 R.E. 2019, i as amended by Written Laws (Miscellaneous Amendment) Act, No. 2 of 2016), seeking extension of time to file Appeal out of time. The application is supported by the affidavit deposed by Furahini Konga, the applicant. The respondents on the other hand, failed to submit counter-affidavits in order to controvert the contents of the applicants affidavit. Counsel for the applicant however sought an order for ex-parte hearing which was granted and the matter was argued by way of written submission in support of the application as required by the law. In support of the application, Mr. Mwakilima submitted that the grounds for seeking extension of time are contained in the affidavit of Mr. Furahini Konga. The said affidavit was adopted as part of the submission in support of the application. The learned counsel also referred to the content of paragraphs 6 to 13 of the applicant's affidavit, which he said, the facts and the circumstance of the effort made during the filling of his appeal before the court. The learned counsel maintained that since the appeal was filed but the delay was due to the instruction of Mr. Mapunda to require a copy of decree before the filling of the said appeal. 2 He was told by Mr. Mapunda that; he was supposed to file an application for extension of time to file his appeal. The learned counsel emphasis that the applicant tried his best to file an appeal within time. The document was received by Mr. Mapunda of civil registry of the court who denied to swear an affidavit in support of this application, and some facts which was very crucial to support the application for extension of time. The learned counsel submitted that, the said grounds constitutes good cause

to grant the application sought. Principally that is the gist of his submission. After careful consideration of the facts deposed in the affidavit filed in support of the application coupled with the detailed arguments made by the learned counsel for the applicant in his written submission. I find that the only issue for determination is whether there are sufficient grounds laid for extending the time of lodging an appeal against the judgment and decree of the trial Tribunal in Land Application No. 33 of 2021. The law is settled that in an application of this nature, the applicant is required to show good cause why he failed to do what he was supposed to do within the prescribed time. 3 It is evident from the proviso of section 41(2) of the Act that, whether or not to grant an extension of time is a matter for the discretion of the Court. To that end the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an application for extension of time. The reasons for the purported delay in this case are as shown in the affidavit in support of the application, the applicant's written submission and the arguments advanced by the applicant's learned, counsel coupled with the authority cited in support thereto. However, what constitutes good cause has not been codified, although this Court and Court of Appeal of Tanzania has in various instances stated a number of factors to be considered. These include; whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; the lack of diligence on the part of the applicant, the applicant be able to account for the entire period of delay and existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged. (See for instance the cases of Oswald Masatu Mwirarubi v. Tanzania Processors Ltd, Civil Application No. 13 of 2010; and Omary Shabani Nyambu v. Dodoma 4 Water and Sewerage Authority, Civil Application No. 146 of 2016 (both unreported). I have with greatest care gone through the record of the case and the submissions made by the applicant's learned counsel. There is no doubt that prior to this application, the applicant was supposed to attach all necessary documents needed for facilitating his appeal to be lodged in the court registry. There is no doubt that the ground for extension of time advanced by applicant's affidavit before this court mention Mr. Mapunda. The said content narrated that, Mr. Mapunda was the one who instructed him to attach a decree in order to be availed with the control number for the purpose of facilitating his appeal to be lodged in the court registry. It is settled law that, when the affidavit in the application mention another person then, the mention person has to swear an affidavit in support, failure to do that renders the content of an affidavit that mention another person hearsay. In the case of Benedict Kimwaga v. Principal Secretary, Ministry of Health, Civil Application No. 31 of 2000, CAT at Dar (unreported) it was held that; 5 "If an affidavit which mentions another person, then that other person has to swear an affidavit. However, I would add that, that is so where the information of that other person is material evidence because without the other affidavit it would be hearsay. Where the information is unnecessary, as is the case here, or where it can be expunged, then there is no need to have the other affidavit or affidavits." See also NBC Ltd v. Superdoll Trailer Manufacturing Co. Ltd, Civil Application No. 13 of 2002, CA T at Dar (unreported). The applicant's learned counsel argued that the applicant was making communications with other offices to get relevant documents which is a decree of the trial Tribunal before he lodged his appeal on time. I have considered this assertion and found that it lacks proof since the applicant ought to have presented documentary evidence to support the assertion that there were ongoing

communications with other offices about the matter. It follows therefore that; the applicant has failed to account for each day of the delay. Pursuant to the cited decisions, the arguments based on the grounds contained in the applicant's affidavit is a hearsay and it is not self-sufficient to extend the time. In the circumstances, the 6 application is accordingly dismissed for want of merit. I make no order as costs on the ground that the application was heard ex parte. It is so ordered. D. B. NDUNGURU JUDGE 31/08.2023 7

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/furahini-konga-v-dama-jimoka-extensionoftime-tzhc-2023

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