

**IN THE HIGH COURT OF ZANZIBAR**

**HELD AT TUNGUU ZANZIBAR**

**MISCELLANEOUS CIVIL APPLICATION NO. 91 OF 2022**

(Arising from the Judgment of the Land Tribunal of Vuga / Majestic)

(Hon. Khamis Rashid Khamis, RM)

**Dated:** 31<sup>st</sup> August, 2021 in Civil Case No. 104 of 2011.

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SALUM KHAMIS SALUM ..... APPLICANT

V.

EXECUTIVE SECRETARY WAKF AND TRUST COMMISSION ..... RESPONDENT

( Represented by Recognized Agents ALI HASSAN ALI, MOHAMMED SAID  
SALUM and MASOUD SAID ALI)

**RULING**

***Dated: 27<sup>th</sup> February, 2023***

**S. HASSAN, J**

This is a Ruling for an application for extension of time within which to lodge an appeal out of time against the decision of the Land Tribunal of Majestic, Vuga at Zanzibar (Hon Khamis Rashid Khamis, (RM)) dated 31<sup>st</sup> day of August, 2021 in Civil Case No. 104 of 2011.

The application is by way of Chamber Summons made under **Sections 126 and 129 of the Civil Procedure Decree Cap 8 of the Laws of Zanzibar**, and supported by an affidavit deponent by Salum Khamis Salum, where the reasons for delay have been stated.

The brief background of this matter is that, at the Land Tribunal, Majestic – Vuga, the Petitioner the Executive Secretary of the Wakf and Trust Commissioner (the respondent in this Application) instituted a suit against Salum Khamis Salum (the applicant in this Application) for ownership and civil trespass over the disputed parcel of land situated at Kisakasaka, Western B District, Urban West Region of

Unguja. The petitioner alleged that the late Hassan Ali Abdalla and Rajab Ali Abdalla are the lawful owners of the disputed parcel of land in which they had bought it in the year 1957. The petitioner further alleged that, in the year 2007 Salum Khamis Salum (applicant) had entered the disputed land, declaring ownership, taking possession of the same, establishing building construction and selling some part of the land without legal justification.

The Respondent denied the allegations and argued that he had inherited the disputed land from Haji Ali. The Land Tribunal heard the matter and delivered its judgment on the 31<sup>st</sup> August, 2021 in favour of the Petitioners. The Respondent is aggrieved by that decision of the court hence intended to appeal, but failed to appeal with prescribed statutory period of 90 days, hence this application for extension of time to lodge an appeal out of time.

At the early stage of the matter the applicant was represented by Advocate Mr Omar Sheha but the advocate was absent in 2 sessions when this application was scheduled for hearing without justified reasons and on the 25<sup>th</sup> January, 2023 this court gave Order that on the next hearing date when the application is set for hearing the matter shall proceed with or without the presence of Mr Omar. On the 30<sup>th</sup> January, 2023 the matter came for hearing and again Mr Omar was absent, hence the matter proceeded whereby the Applicant did not objected on hearing of the Application and made his own submission, while the respondent was represented by learned Advocate Mr. Hamdu Mohamed Seif.

In his submission Mr Salum Khamis (herein after shall be referred to as Applicant) stated the reasons for delay in general and prayed the court to consider his reasons for delay to file appeal in time as stated in his Affidavit to file appeal on time was due to the following facts:

1. That his wife was ill and he had to travel to Tanzania Mainland to attend his wife and he stayed there for a long period of time (para 2 of affidavit)
2. That, while he was in preparation to file his application for extension of time to file an appeal out of time, he faced boundary challenge from JWTZ (Jeshi la Wananchi wa Tanzania) and told not to appeal until he settle his land boundary with JWTZ. (para 4 of affidavit)

3. That, there were series of discussions with JWTZ which took some time to conclude until the settlement was reached.

Hence he was prevented by sufficient cause to file his appeal on time, and that is why he has made this application for an extension of time, at the end of his submission he prayed for the court to allow the applicant to file an appeal out of time.

In reply to the applicant application Mr. Hamdu resisted the application and submitted that the reasons brought forward by the applicant are not sufficient to warrant the court to extend time to file an appeal out of time. He further submitted that the applicant did not submit any evidence that his wife was ill and he had to attend her in Tanzania Mainland, the applicant did not provide any medical records relates to his wife medical condition, and also the applicant did not produce any married certificate to prove that he is married.

In respect to para 4 of the affidavit, Mr. Hamdu stated that the applicant did not provide any evidence which prove that there was a boundary dispute between the applicant and JWTZ which prevented the applicant to file his appeal on time prescribed by the law. He further stated that the applicant obtained the decree of the court on 31/8/21 and proceedings on 3/12/21, in the end he prayed for the application to be dismissed for lack of sufficient reasons.

In rejoinder the Applicant maintained his position that they have demonstrated sufficient and good cause for the court to use its discretional powers to allow the applicant to file an appeal out of time.

Having heard the parties, the question that follows is for this court to determine whether the applicant has been able to show sufficient cause for the court to exercise its discretionary powers to extend time for the applicant to lodge his intended appeal out of time.

I am aware and alive to the provision of section **95 (1) of the Civil Procedure Decree Cap 8**, which requires the applicant to show sufficient cause in order to move a court to extend time period in certain cases, the section reads as follows:

***“ Any application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribe therefore, when the appellant***

***or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period"***

Subsection (2) of section 95 has provided for facts which may determined as the sufficient cause, the subsection reads as follows:

***" The fact, that the applicant was misled by any order, practice or judgment of the court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section"***

Apart from that, there are many authorities this court can refer to determine as when the court decides that the applicant has advance good or sufficient cause or not.

In **Meis Industries Ltd and 2 others v. Twiga Bank Corp; Misc Commercial Cause No. 243 of 2015**, High Court of Tanzania (Commercial Division) at Dar es Salaam (unreported) the Court held that:

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

The Court also in the case of **Finca (T) Ltd and Another v. Boniface Mwalukisa, Civil Application No. 589/12 of 2018** (unreported) it was stated as follows:

***"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 the deliberation 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."***

Also in **Benedict Mumello v. Bank of Tanzania [2006] 1 EA 227**, the court subscribed to the decision of the single justice of the court in the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwandwa, Civil Application No. 6 of 2001** (unreported) where the Court held that:

***‘What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant’.***

Also the decision of the court of Appeal in **Ramadhani v. Geita Mining, misc Application No.29 of 2013 at page 2 and 3**. In this case the court explained the guiding principle that in order to justify a court extending time there must be some material on which the court can exercise the discretion. See also in **Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007** (CAT unreported), the Court observed that the following:

***‘What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules’***

From the above cited authorities, this court is of the firm view that the word **‘sufficient or good cause’** depend on the circumstances of the case including reasons and explanations advanced by the applicant.

In the current application it is on record that the Judgment was delivered on the **31<sup>st</sup> August, 2021** and right of appeal was explained to the parties by the Hon Magistrate. The records shows that the applicant applied for the proceedings, judgment and decree on the **31/8/2021** for the purpose of appeal against the judgment and decree of the tribunal, very unfortunate the records of the court are silent on which date the applicant was provided with proceeding, judgment and decree.

So what is the statutory limitation for which an aggrieved party may file an appeal to the High Court?

**The First Schedule of the Decree Cap 8**, provides for limitation of Appeals and applications, section 1 of the schedule has set the period of limitation to file appeal which is 90 days from the date of the order or decree appealed from. In the application in hand the decree of the tribunal was delivered on **31<sup>st</sup> August, 2021** therefore the applicant had 90 days to file his intended appeal to the High Court.

The Decree also has in **section 100 (2)** prescribed for a manner which computation of time shall be considered for an appeal, an application for leave to appeal and an application for a review of judgment, the section reads as follows:

***“ In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.”***

I have decided to refer **section 100 (2)** for the reasons that, I want to know for certain when the statutory 90 days for appeal commenced after the applicant was given the proceedings, judgment and decree of the court, and how many days the applicant is late to lodge his intended appeal within the time prescribed. As I have mentioned earlier on, the records of the courts are silent on the date which the proceedings, judgment and copy of decree was given to the applicant hence it is not easy for this court to make determination on the date, the applicant also did not help because he also did not provide for such date in his affidavit or in his submission. However the records shows that, the respondent applied for the proceedings, judgment and decree on the **6<sup>th</sup> September, 2021** and was given the same on **13<sup>th</sup> December, 2021**, so I will presume that the Applicant was given the proceedings, judgment and decree around the same date. If that is so, then the applicant had 90 days from **13<sup>th</sup> December, 2021 to 13<sup>th</sup> March, 2022** to file his appeal on time which he did not do so. Instead 7 months later he decided to institute his appeal only for him to realize he was out of time and hence this application.

I am alive to a settled law that the applicant has to account for each day of delay in order to show sufficient or good cause for this application to be succeeded, see the cases of **Dsm City Council v. S. Group Co. Ltd, Civil Appeal No. 234 of 2015, Selemani Juma Masala v. Sylvester Paul Mosha & Another Civil Application No. 210|01 of 2017** (unreported)

Clearly the applicant was aware of his right of appeal and that is why on the **31<sup>st</sup> August, 2021** the same day the judgment was delivered he applied for the proceedings, judgment and decree but failed to lodged his appeal on time. If that is the truth of the matter based on records in hand, what remain is for this court now to determine whether the reasons provided by the applicant are sufficient to warrant this court to give extension of time to

file an appeal out of time and whether the applicant has account for each day of his delay.

In his affidavit and during his submission, the applicant gave 3 main reasons which contributed for his delay as follows: (1) That his wife was ill and he had to travel to Tanzania Mainland to attend his wife and he stayed there for a long period of time; (2) That, while he was in preparation to file his application for extension of time to file an appeal out of time, he faced boundary challenge from JWTZ (Jeshi la Wananchi wa Tanzania) and was told not to appeal until he settle his land boundary with JWTZ. (3) That, there were series of discussions with JWTZ which took some time to conclude until the settlement was reached

As rightly pointed out by Mr. Hamdu that the applicant has failed to provide any solid evidence for his reasons of delay, hence no sufficient or good cause is shown for this court to use its discretionary power to extend time for appeal. I agree with the advocate for the respondent that, the applicant has failed to account for each day of his delay and also failed to provide solid and tangible reasons for his delay, the reasons provided are too general and no detailed explanation was provided in each of the reasons. The submission made by the applicant not convincing enough to warrant the extension of time. The reasons also do not fall within the scope of subsection **(2) of section 95 of the Civil Procedure Decree Cap 8.**

For the above reasons, this application is devoid of merits and is hereby dismissed in its entirety.

**It is ordered accordingly.**

***Dated: 27<sup>th</sup> February, 2023***



**S. HASSAN**

**JUDGE.**

**Court:**

Right of Appeal is explained to the parties.