

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 72 OF 1993

ALOYCE LAZARO APPELLANT

VERSUS

ABDALLAH MAGANGA RESPONDENT

J U D G M E N T

Mackanja, J.

The origin of this appeal is an application before the Dar es salaam Housing Tribunal in which the appellant lost. The subject of that application was a disputed tenancy agreement between the litigants, particulars of which are not relevant now. Suffice it to say that the decision was delivered on 4th October, 1989 and the appellant filed notice of his intention to appeal on the following day. He was not supplied with a copy of the decision immediately, but there is undisputed evidence that the respondent got his copy of judgment on 21st October, 1989 after paying the prescribed fee of Shs. 60/= as shown on Exchaquer Revenue Receipt (ERV) No. 125070 which bears the same date.

The appellant could not get his copy of the judgment till 25th March, 1991. His appeal was already time-barred. So on 29th May, 1991 he lodged an application for enlargement of time before the Housing Appeals Tribunal within which to file his appeal. He was, as before me, represented by Mr. Mtungwa, learned advocate.

At the hearing of the application Mr. Mtungwa had alleged that his client delayed to lodge the appeal in time because he could not get the necessary documents early enough. That contention was promptly challenged by the respondent. The Housing Appeals Tribunal ^{found no} unanimously/merit in it because the respondent had managed to get his copy only 17 days after the judgment was delivered. It took the appellant about 1½ years to get his own copy. The application for extention of time within which to appeal was therefore dismissed.

The appellant has been ^{aggrieved} and he has lodged two grounds. Mtungwa has submitted in respect of the first ground that his client could not get a copy of the judgment in time because the Housing Appeals Tribunal changed office premises and it took a long time before his client could locate them. Now, there is no doubt this is a lame excuse. No reasonable tribunal would believe as wild a story as the contention that it had to take 1½ years for the appellant to locate the ~~new~~ premises to which the Housing Appeals Tribunal moved. I entirely agree with Mr. Mboko who appeared for the respondent in forma pauperis that the appellant was not ~~seen~~ at all to appeal. If he had been so, he could have obtained a copy of judgment within 17 days of its delivery like the respondent did. The delay is therefore so unreasonably inordinate, and unjustified, that this appeal would fail on this ground alone, for he had only 45 days^s within which to appeal after the copy of Judgment was ready.

In the second ground of appeal it is contended that the Housing Appeals Tribunal erred in law for going through the record of appeal and determined that the application for leave could also not succeed because it stood no chance. Mr. Mtunga believes that the chances of success are overwhelming. His contention is based on the ground that the tenancy agreement was voluntarily executed by the litigants and it was attested before a lawyer from the Tanzania Legal Corporation.

Mr. Mboko contends that the tenancy agreement was vitiated by fraud in that it was written in English and that the respondent was merely called upon to attest it. Of course that is a very serious allegation, but it appears to be supported by the evidence.

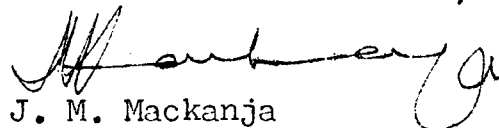
According to the record of the proceedings it was agreed by the parties that the appellant meet costs arising from the restoration of the respondent's house and that those costs could be treated as rent. It cost the appellant Shs. 175,000/= to restore the house and in return he secured a tenancy agreement for 33 years. The Regional Housing Tribunal assessed the rent and arrived at the decision that the sum of Shs. 175,000/= could cover rent for three years only. That was the decision which the appellant sought to impugn but could not appeal in time.

Applying the law on the facts of this case the Housing Appeals Tribunal made a correct decision when it dismissed the application for extention of time. I uphold that decision.

In the result the appeal fails and it is accordingly dismissed with costs here and in the two Tribunals below.

Delivered.

Mr. Mtunga: For Applicant (Absent)
In Person: For Respondent.



J. M. Mackanja

JUDGE

16/2/1995

Mr. Mboko has vigorously supported that decision and it is the same decision that the Housing Appeals Tribunal unanimously held that the appellant could not succeed to challenge.

The issue that flows from the above submissions is quite straight forward, and that is; what are the factors which should be considered in an application like this one? It is my considered judgment that one of the primary considerations is that the applicant must show that there was a sufficient cause for the delay. In particular, he has to give a chronology of events which hindered him from complying with the mandatory rules of procedure. Although each application has to be decided on its peculiar facts as a general rule however the applicant must satisfactorily explain the reason for the delay. I am not persuaded that the appellant discharged his that obligation. As it was held in Devshi V. Diamond Concrete Co. (1974) EA 493 where the appellant filed a notice of his intention to appeal in time but took 3½ years to apply for extension of time within which to file his petition of appeal:-

"... Notice of appeal was filed on his behalf presumably on his instructions, because it is my experience that advocates do not take steps involving the expenditure of money without receiving instructions. That was 3½ years ago. Since then the applicant has done nothing to prosecute the appeal. He has been spurred into action because execution proceedings have been put in train against him. He is unable to put forward a single valid reason why he should have time extended at this late stage except his belief that the appeal has reasonable prospects of success. That is a factor for consideration in applications of this nature but the main factor, and the burden is on the burden is on the applicant in this respect is that the court must be satisfied that for some sufficient reason it was not possible for the appeal to be lodged in the time prescribed..."

As I have said there is absolutely no valid reason which was put forward to justify the delay.