

**IN THE HIGH COURT OF TANZANIA**

**AT DODOMA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 48 OF 2017**

*(Originating in the District Land and Housing Tribunal of Dodoma Land  
Case Appeal no. 184 of 2015 from Land Case  
No 56 of 2015 of Igandu Ward Tribunal)*

**LUBELEJE CHIBUTU ..... APPLICANT**

**VERSUS**

**MESHACK CHIMIYAGWE.....RESPONDENT**

**RULING**

**25<sup>th</sup> July & 15<sup>th</sup> August, 2017**

**KWARIKO, J.**

The applicant herein lost appeal to the respondent herein before the District Land and Housing Tribunal of Dodoma on 4/7/2016 and although he was aggrieved by that decision he failed to appeal within the period prescribed by law. Thus, the present application is for extension of time to file appeal against the impugned decision which has been drawn and filed by MN & Associates, Advocates Co. This application has been filed in terms of section 38 (1) of the Land Disputes Courts Act No. 2 of 2002 and supported by the affidavit of one Ally Mussa Nkhangaa advocate of the

applicant. In the affidavit it has been essentially deposed that the delay to file appeal has been attributable to the district tribunal which failed to supply to the applicant the copy of impugned judgement within time after he had applied for the same and that the time taken to await for the same ought to be excluded in computation of limitation period.

On the other hand the respondent filed his counter-affidavit to oppose this application where he deposed that the applicant failed to prove that he really had applied for the copy of judgment and hence failure to appeal within time was due to his negligence.

At the hearing of the application Mr. Nkhangaa learned advocate argued the same on behalf of the applicant where he essentially adopted his affidavit evidence revealing reasons for the delay and prayed the application to be granted. On his part the respondent also adopted his counter-affidavit in opposition of the application.

The question that this court is required to determine is whether the applicant has shown sufficient reasons for the delay. The main reason advanced by the applicant for the delay is that the district tribunal delayed to supply him with copy of impugned judgment that he had applied as he needed it before filing the appeal. This court has considered this reason and found that the applicant has not mentioned the law that obliged him to

wait for copy of the impugned judgment before he filed his appeal. This is so because the relevant law has no such requirement. Section 38 of the Land Disputes Courts Act [CAP 216 R.E. 2002] dealing with appeals in matters originating in the ward tribunal provides thus;

*(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court :*

*Provided that the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.*

*(2) Every appeal to the High Court shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought.*

*(3) Upon receipt of a petition under this section, the District Land and Housing Tribunal shall*

*within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court.*

Therefore, reading from this law there is no any requirement to attach copy of impugned judgment to the appeal nor is there any direction that the time used to obtain a copy of judgment ought to be discounted from computation of limitation period as claimed by Mr. Nkhangaa learned advocate; as that prerogative is found under section 19 of the Law of Limitation Act [CAP 89 R.E. 2002] which is not applicable in the instant case as per section 43 (f) thereof which says that;

*This Act shall not apply to—*

*(a) to (e).....not applicable*

*(f) any proceeding for which a period of limitation is prescribed by any other written law, save to the extent provided for in section 46.*

Now, according to this provision where the period of limitation is prescribe by other written law as in the instant case, the Law of Limitation Act is not applicable.

Thus, as there is no any other reason given by the applicant for the delay this court finds that he has not given sufficient reason for the delay and therefore the application is found non-meritorious and it is hereby dismissed with costs.

Order accordingly.



**M.A. KWARIKO**

**JUDGE**

**15/8/2017**

**DATED at DODOMA this 15<sup>th</sup> day of August, 2017**



**M.A. KWARIKO**

**JUDGE**

**15/8/2017**

**Date : 15/08/2017**

**Coram :** Hon. M.A. Kwariko, J.

**Applicant :** Absent/Mr. Nchimbi Advocate for Mr. Nkhangaa Advocate

**Respondent - Present**

**C/c : Judith**

**Mr. Nchimbi Advocate**

The matter is for ruling. We are ready.

**Respondent:** I am also ready.

**Court:** Ruling delivered in court today in the presence of the Respondent and Nchimbi learned Advocate for Mr. Nkhangaa learned Advocate for the Applicant and Ms. Judith Court Clerk.



A handwritten signature in black ink, appearing to be "M.A. Kwariko", written over a horizontal line.

**M.A. KWARIKO**

**JUDGE**

**15/8/2017**

**Court:** Right of Appeal Explained.



A handwritten signature in black ink, appearing to be "M.A. Kwariko", written over a horizontal line.

**M.A. KWARIKO**

**JUDGE**

**15/8/2017**