

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

MISC. CIVIL APPLICATION NO. 65 OF 2017

(C/F Arusha District Land and Housing Tribunal Appeal No. 65 of 2015 and Application
No. 13 of 2014 Majengo Ward Tribunal)

FRANK ESTOMAH.....APPLICANT

VERSUS

FATUMA NANGAI.....RESPONDENT

RULING.

S.M. MAGHIMBI, J:

The applicant, Frank Estomiah, brought this application under the provisions of Section 38(1) of the Land Disputes Courts Act, 2002. He is seeking for orders that:

- i. This Honourable Court be pleased to extend time for the Applicant to Appeal to the High Court against the decision of (Hon. Mdachi Chairman) in Arusha District Land and Housing Tribunal Appeal No. 65/2015.
- ii. Costs abide by the events.

The application was supported by Mr. Jerry Siay, learned Counsel representing the applicant dated 12th June, 2017. The respondent who was unrepresented, opposed the application.

In his affidavit as well as the written submissions in support thereto, Mr. Siay submitted that the applicant herein preferred Appeal No. 61/2015 before the Arusha District Land and Housing Tribunal against the decision of Majengo (Mtowa Mbu) Ward Tribunal. On the 03/04/2017, the District Land and Housing Tribunal made its decision in favor of the respondent. Aggrieved, the applicant requested to be supplied with copies of the Judgment and Decree of the Tribunal so as to appeal to this Court. That the requested copies were supplied to the applicant on 05th June 2017.

Mr. Siay submitted that as per section 38(1) of the Act, the time to lodge an appeal is 60 days after the date of decision and that since that had lapsed; the applicant has lodged this application. He submitted that the judgment of the District Tribunal was certified on ad signed on 05th June, 2017. Mr. Siay argued that the delay in filing this application was not deliberate on his part but on the circumstances beyond his control.

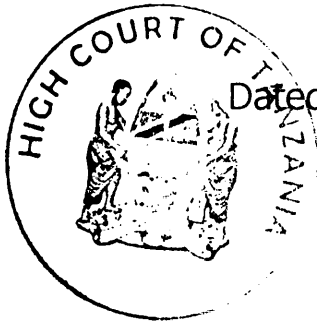
In reply the respondent submitted that the reasons for delay as advanced by the applicant are not sufficient to persuade this court to extend time to file the said appeal. Her argument was that the applicant had sufficient time to request for copies of judgment and decree. That the law requires a notice to appeal to stop the computation of time till one gets copies of judgment. That the applicant carelessly delayed to file his appeal. She prayed that the application be dismissed.

I have considered the reasons for the delay advanced by Mr. Siay. In fact there is only one reason for the delay that was advanced, that the delay was due to delay in obtaining copies of judgment and decree of the first appellate tribunal. However, this matter originated from the ward tribunal

hence there was no pre-requisite that a copy of judgment, decree or proceedings should be attached. What the appellant was required to do is file their petition of appeal at the first appellate court.

Having made the above findings, the advanced reason that there was a delay in obtaining a copy of judgment and decree is hence not sufficient to convince the court to use its discretionary powers to extend time to the applicant. Consequently, this application is hereby dismissed. The applicant shall bear the costs of the respondent to this application.

Application Dismissed



Dated at Arusha this 21st day of March, 2018

A handwritten signature in black ink, appearing to read "S.M. Maghimbi", is written over a horizontal dotted line.

S.M. MAGHIMBI

JUDGE