

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC LAND APPLICATION NO. 84 OF 2017

LOWASA MESARYEKIAPPLICANT

VERSUS

DANIEL WILLIAM ALOTONO RESPONDENT

(Arising from the decision of the District Land and Housing Tribunal for Simanjiro dated 12th June 2017 as per Hon. J.W. Sillas, the chairman)

RULING

MAIGE, J.

Before me is an application for extention of time to appeal against the decision of the District Land and Housing Tribunal for Simanjiro ("the trial tribunal"). In the said decision, the **trial tribunal** in essence declared the respondent herein the lawful owner of the **suit property**. The applicant was not pleased with the decision. As a necessary step for pursuit of his intended appeal, he sought for copies of the judgment and decree of the **trial tribunal**. The documents were availed to him though not timely. Having delayed to lodge his appeal, the applicant has filed this application.

The application is preferred under section 38 (1) of the Land Disputes Court Act No. 2 of 2002 and is supported by the affidavit of the applicant. It has been opposed by the counter affidavit of the respondent.

By the permission of the Court, the application was disposed of by way of written submissions. For the applicant, the written submissions were filed by **Mr. Lecktony Ngeseyan**, learned advocate and for the respondent by **Mr. Charles Abraham**, learned advocate. In his written submissions, **Mr. Ngeseyan** having adopted the factual deposition in the affidavit, submitted that sufficient cause exists for the grant of the application. **Mr. Abraham** thought that the period between 28th June 2017 when copies of judgment and decree were availed to the applicant and 12th July 2017 when the instant application was filed has not been accounted for. Relying on the authority in **MARY ALEX MALLYA VS. KIMANDOLU UTUFAMILY SAVING & CREDIT SOCIETY**, MISC CIVIL APPLICATION NO. 144 OF 2016 (HIGH COURT- ARUSHA, UNREPORTED), the counsel blames the applicant for failure to justify for every day of delay. On top of that, the counsel has referred me to a number of authorities in support of an indisputable position of law that; demonstration of sufficient cause for the delay is a condition precedent for grant of extension of time.

From the counsel submissions, the question that I have to resolve is whether sufficient cause for the delay has been established. I am preparing

myself to answer the question affirmatively for the reasons that I will assign in due course. The reason why the applicant delayed to pursue an appeal according to paragraphs 6,7,8,9 and 10 of the affidavit is that he was awaiting for copies of the judgment and decree. In accordance with paragraph 6 of the affidavit, the applicant requested for copies of the judgment and decree on 30.3.2017. It was not until on 28.06.2017 when he was supplied with the same, it is further deposed. The letter seeking for copies of judgment and decree is attached in the affidavit as **L-1**.

It is not in dispute that, the intended appeal being against the decision of the **DLHT** on trial, a copy of judgment is an essential ingredient for the intended appeal. In terms of section 19(2) of the Law of Limitation Act therefore, the period when the applicant was awaiting for a copy of judgment has to be exempted. It is irrefutable in the instant matter that, the applicant timely requested for copies of the judgment and decree. There appears to be an agreement between the parties that, a copy of judgment was supplied to the applicant on 28th June 2017. In the circumstance therefore, that was the date when time, for the purpose of limitation, started running.

This application was filed 12.07.2017. It was merely 14 days from the date when time for the purpose of limitation started running. It was thus well within time and I find no reason why the applicant should be obliged to

account therefor. The Court of Appeal has held from time to time that; once the appellant makes a request for a certified copy of judgment without any default on his part, he automatically becomes entitled exclusion under section 19(2) of the Law of Limitation Act. Indeed, in accordance with decision of the Court of Appeal in the **Registered Trustees of Marian Faith Healing Center vs. the Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2017 (CAT unreported), once the appellant applies for a certified copy of judgment, the respective registry is required to act reasonably and diligently well to ensure that the appellant is availed with copies of the documents without necessarily being reminded (Page 16 thereof).

For those reasons therefore, I find that the period of 14 days from the date when the applicant was supplied with the necessary documents for pursuit of his intended appeal and the date of filing of this application was a reasonable period within which to take further necessary steps for pursuit of an appeal. The application is thus granted with costs. The appeal should be filed within 30 days from the date of this ruling.

It is so ordered.

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(SGD)

MAIGE. I

JUDGE

04.09.2018

Date:- 04/9/2018

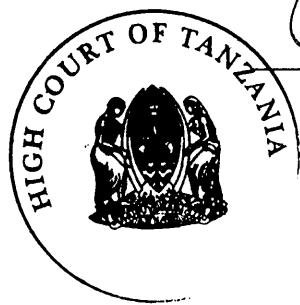
Coram: Hon. Maige, J

Applicant: Mr. Ngeseyan Advocate

Respondent: Mr. Ngeseyan /Charles, Advocate

B/S: Mariam.

Court: Ruling delivered application granted.



A handwritten signature in black ink, appearing to read "I. Maige", is written over a horizontal line.

**I. MAIGE,
JUDGE**

04.09.2018.