

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC LAND APPLICATION NO. 181 OF 2017

*(Arising from the judgment of the District Land and Housing Tribunal for
Karatu in Land Application No. 14 of 2012)*

NEHEMIA PHILIPO.....APPLICANT

VERSUS

CHRISTOPHER DUWANGHE..... RESPONDENT

RULING

BEFORE: MAIGE, J

Before me is an application for extension of time to appeal to this Court against the judgement of the District Land and Housing Tribunal for Karatu as per V. Ling'wet (Hon. Chairman) in Land Application No. 14 of 2012. The instant application is preferred under sections 14 (1) of the Law of Limitation Act (Cap. 89, R.E., 2002) and its is premised on the affidavit of NEHEMIA PHILIPO, the applicant, which support the application. It has been factually opposed by the counter affidavit of CHRISTOPHER DUWANGHE, the respondent.

On the date of hearing, the applicant appeared in person and was not represented. The respondent was represented by Mr. Qamara, learned advocate. In his brief oral submissions, the applicant adopted the factual depositions in the affidavit and urged the Court to grant the application. The submissions of Mr. Qamara in rebuttal was based on the proposition that, for an order for extension of time to be granted, the applicant must account for every day of delay. He was backed up by the authorities of the Court of Appeal of Tanzania in **MANSON SHABA AND 143 OTHERS VS. THE MINISTER OF WORKS AND OTHERS**, CIVIL APPLICATION NO. 244 OF 2015 (UNREPORTED) and **INTERCHICK COMPANY LIMITED VS. MWAITENDA AHOBOKILE MICHAEL**, CIVIL APPLICATION NO. 218 OF 2016 (UNREPORTED). The applicant is challenged for failure to justify the 9 days period subsequent to the procurement of the copies of judgment and decree.

From the authorities above referred, it is a settled position of law that for an order of extension of time to pursue an action be granted, the applicant must demonstrate sufficient cause that prevented him from pursuing his action within the time limit. More particularly, the applicant has to justify every day of delay. In view of the authority of the Court of Appeal in **ROYAL INSURANCE TANZANIA LIMITED VERSUS KIWENGWA STRAND HOTEL LIMITED**, CIVIL APPLICATION NO. 111 OF 2009, along with the reason of delay, four factors have to be considered before determining the application. These are; First, length of the delay; Two, reason of the delay; Three, degree of prejudice to the respondent if the

application is granted; Four, chances of appeal succeeding if the application is granted. The four tests, in my understanding, are not the only tests. Neither does each and every one apply in every case. In its own words, the Court of Appeal had the following to say at page 14 of the judgment that: *there could be many other factors, that could arise from the facts of each case.*

Therefore, what amount to "sufficient reason" is a question of fact which must be determined by reference to all the circumstances of each particular case.


The question that I have to decide in the circumstance is whether the applicant has demonstrated sufficient cause for extension time. The main ground for the delay is the fact that the applicant was awaiting for copies of judgment and decree. The essentiality of such documents in the intended appeal appears to have not been doubted. The applicant claims, in paragraph 4 of the affidavit to have sought for copies of judgment and decree on 29.09.2017. This is substantiated by a copy of the request letter attached in the affidavit. In accordance with paragraph 7 of the affidavit, it was not until on 6th November 2017 when the applicant was availed with copies of a judgment and proceedings. The instant application was filed on 15.11.2017. It is hardly 9 days from the date of the procurement of the necessary documents. For a person who was not represented during trial and considering the fact that he is a resident of Karatu 9 days in my view is reasonable.

In my opinion therefore, the applicant has been able to demonstrate sufficient cause for extension of time to pursue an appeal. Therefore, the

application is granted with costs. Time to appeal to this Court against the decision of the District Land and Housing Tribunal for Karatu in Application No. 14 of 2012 is hereby extended for a period of 30 days from the date hereof.

It is so ordered.

Right to appeal is duly explained.


I. MAIGE
JUDGE
31/10/2018

31/10/2018

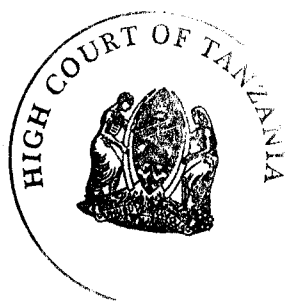
Coram: Hon. I. MAIGE, J.


For Applicant: Present in Person

For the Respondent: Absent

Cc: Mariam

Court: Ruling delivered; application granted.




I. MAIGE
JUDGE
31/10/2018