

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND CASE APPLICATION NO. 122 OF 2018

(Arising from District Land and Housing Tribunal for Mwanza Land Case No. 152 of 2014)

JEPHTA JEREMIAH MACHANDARO APPLICANT

VERSUS

**1. NATIONAL MICROFINANCE BANK
2. YONO AUCTION MART & CO. LTD
3. YUDITH EMMANUEL LYIMO** } **RESPONDENTS**

RULING

23 & 23/01/2019

RUMANYIKA, J.:

Brought under **Section 41 (2) of the Land Disputes Court Act Cap. 216 R.E. 2002** (The Act), application is for extension of time within which to lodge appeal against judgment and decree of 17/11/2007 of the District Land and Housing Tribunal for Mwanza at Mwanza (the DLHT) is supported by affidavit of Jephta Jeremiah Machandaro. Whose contents essentially, the applicant herein adopted at the hearing.

Messrs. John Edward and David Muzahula learned counsel appeared for the applicant and 1st and 2nd respondents respectively. The 3rd respondent appeared in person.

When the application was called on today for hearing, Mr. D. Muzahula learned counsel had "affidavit related" 2 limbs preliminary points of objection (the p.o) pursuant to the 04/09/2018 notice. But there in between, perhaps on reflection the learned counsel just dropped the p.o.

Now, with regard to the merit part of it, Mr. John Edward learned counsel submitted that; upon delivery on 17/11/2017 of the impugned judgment, and he applied in writing for copy, irrespective of the 03/04/2018 1st reminder instantly, he did not get it until as late as 06/06/2018. Already late in the day. Without which copy, one could not have lodged appeal. That is all.

Having adopted contents of counter the affidavit, Mr. Muzahula learned counsel submitted that no good cause/sufficient ground for delay was given by applicant. (Case of **Oswald Masato Mwizarubi Vs. Tz Fishing processors Ltd** Comm. Case No. 01/2007 (CA) MZA unreported. The copy could not that long be ready for collection. That the application just laid back relaxing. Application lacks merits. Stressed Mr. Muzahula advocate.

The issue, and it is trite law is whether the applicant has assigned sufficient cause for the delay. The answer is yes! Reasons being that:-

One; as a necessary immediate step, he applied for copy of the impugned judgment well within time, say five 5 days later. The DLHT acknowledged receipt of same day.

Two; on expiry of five months i.e. on 03/04/2018, he wrote a 1st reminder and the DLHT acknowledged having received the letter same day.

Three; the DLHT throughout did not notify him whether or not the copy was ready for collection. Until as said, on 06/06/2018 (say two months later).

Four; as practice stood then, copies of judgment and the like as happened here, were supplied on a request and payment of the requisite fees.

Now, with him applying for the copy within the 1st five days of judgment and decree, copy of reminder having been received by the DLHT, and in absence of any notification by it that the copies were ready for collection, but also the applicant having collected it just on the same date 06/06/2018, copy was certified as true copy of the original without which admittedly, one could not have filed appeal, and say only 5 days later lodged the present application, it could not be said that the applicant had slept over his right of appeal. Infact he was militantly committed to seeing matter getting to end.

Application is granted. Each party shall bear their costs. Ordered accordingly.

Right of appeal explained.



S.M. RUMANYIKA
JUDGE
23/01/2019