

**IN THE HIGH COURT OF TANZANIA**  
**[LAND DIVISION]**  
**AT SUMBAWANGA**  
**MISC. LAND APPLICATION NO. 1 OF 2020**

**(Misc. Application No. 16/ 2019 Original Application No. 25/ 2018  
from District Land and Housing Tribunal Mpanda)**

**MAMLO LUSWETULA .....APPLICANT**

**VERSUS**

**TABU SHABANI .....RESPONDENT**

**RULING**

**06<sup>Th</sup> – 21<sup>st</sup> May, 2020**

**MRANGO, J.**

This application has been preferred by the applicant under **section 41 of the Land Disputes Courts Act, Cap 216 as amended by section 25 of the Written Laws (Miscellaneous Amendments, No. 2, 2016** seeking for this court to extend time for him to file an appeal. The application is supported by the affidavit of Elias Julius Kifunda, learned advocate.

When the application was called on for hearing, applicant was represented by Elias Julius Kifunda – learned advocate whilst respondent was absent on notice. Mr. Kifunda prayed to argue the application by way

of written submission whereas this court set a date for each party to file submission. The parties filed their respective submission as scheduled and ordered by this court.

Arguing in support of the application, applicant submitted that the application arises from a dispute of 15 acres of dry land situating at Mtapenda within Mpanda District. The respondent is the one who instituted the suit to wit application No. 25 of 2018 in the District Land and Housing Tribunal for Katavi. The exparte judgement of this suit was delivered on the 12/ 12/ 2018 in favour of the respondent.

He further submitted that on the 10<sup>th</sup> day of May 2019 the respondent filed application for execution to wit Misc. Application No. 16 of 2019 in the District Land and Housing Tribunal for Katavi applying for eviction of the applicant from the suit land. Upon receipt of summons the applicant through the service of KIFUNDA and Co. Advocates filed objection simultaneously with an application to set aside the exparte judgement.

He said on the 3/7/ 2019 the application to set aside the exparte judgement was dismissed. The applicant applied for a copy of ruling and drawn order for appealing purposes as appearing on a letter dated 08/7/

2019 attached to the chamber application. He was furnished in time, but in the course of drawing an appeal, his advocate realized that the ruling of the tribunal has been mistaken. The mistakes were that the applicant had been cited as respondent while he was the applicant. The mistaken ruling attached to the chamber application as a first document. Hence his advocate liaised with the tribunal for corrections and succeeded to get it on the 14<sup>th</sup> November 2019 while appealing period had already expired. A copy of the corrected ruling of the District Land and Housing Tribunal attached to the chamber application as a second document.

He submitted that this application was made under **section 41 of Cap 216 as amended by section 41 of the Written Laws (Misc. Amendments (No. 2) Act, 2016. Section 41 (2)** reads as follows:

*"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order*

*Provided that, the High Court may for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty."*

He further submitted that the procedure of lodging an appeal on a matter originating from the District Court, Resident Magistrate Court or District Land and Housing Tribunal is couched under the provision of **O. xxxix Rule of Civil Procedure Code.**

The aforesaid order reads as follows:

1. (i) "Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this order referred to as the court) or to such officer as it appoints in this behalf and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the court dispenses therewith ) of the judgement on which it is found"

He is of the view that in the light of the above legal prepositions, he could not present to the High Court a memorandum of appeal accompanied by a copy of the ruling and drawn order which did bear mistakes. Likewise, he could not present to the High Court a memorandum of appeal which is not accompanied by a copy of the ruling and drawn

order. He had to wait until when he got a corrected copy of the ruling and drawn order document which she received while time to appeal had already expired.

For the above reasons he prayed for the extension of time within which to file an appeal to this court.

Responding, respondent submitted that he owns the land at Mtapenda within Mpanda Municipality. Sometimes in 2016 the respondent instituted a case against the applicant at Nsemulwa Ward Tribunal which was admitted as a case No. 20/ 2016 which was decided in respondent's favour. Aggrieved by the decision the applicant appealed to District Land and Housing Tribunal and his appeal was registered as appeal No. 3 of 2017.

He submitted that the District Land and Housing Tribunal allowed the said appeal on the ground that the Nsemulwa Ward Tribunal had no jurisdiction to entertain the case.

He further submitted that after the decision of District Land and Housing Tribunal for Katavi aforementioned, the respondent filled an application with the District Land and Housing Tribunal at Mpanda, which was admitted as Land application No. 25/ 2018 the case which was decided

exparte in favour of respondent on 12/ 12/ 2018 as the applicant did not turn up despite effort to summon the same ended in vain.

He went on submitting that after the lapse of time to appeal thus of lapse 97 days from date of the said exparte judgment respondent applied for execution with the District Land and Housing Tribunal for Katavi which was registered as Misc. Application No. 16 of 2019. He said this application awakened the applicant who rushed to the Katavi District Land and Housing Tribunal where he filed an objection as well as application for leave to apply for exparte judgement to be set aside as well as objection to the execution which were registered together as Misc. Land Application No. 16 /2019 which was dismissed on the ground that it lacked merit and the right of appeal was thoroughly explained.

He argued that after expiring of 189 days the applicant came before this honourable court and filed this application for extension of time.

The application is indeed a dilution of court process as the application lacks good cause for the delay.

He argued that the applicant did neither show the sufficient good cause so to allow this court to grant extension of time nor count the day as

required by the law as stated by the court of appeal of Tanzania in the **case of Tropical Air (TZ) Limited versus Godson Eliaona Moshi, Civil Application No. 09 of 2017** quoted the case of **Lyamuya Construction Company Ltd vs. Board of registered Trustees of Young Women Christain Association of Tanzania, Civil Application No. 2 of 2010**, CAT at Arusha unreported in which the court stated four reasonable ground of extension of time as follows

- i. The applicant must account for all the period of delay
- ii. The delay should not be inordinate
- iii. The applicant must show diligence and apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- iv. If the court feels that there other sufficient reasons such as the existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged.

He argued further that the applicant claim that he failed to file his appeal on time because there was mistake in the judgement and he realized the same while writing his appeal is only worthless afterthought which he prayed this hounorable court to disregard. Similarly the assertion cannot stand as sufficient reason because it only prove how negligence the applicant and his advocate are as the said letter was drawn on 08/07/ 2019

the same was received by tribunal on 03 august 2019 by the tribunal almost a month.

He said there is neither proof nor any evidence to prove as to exactly when the applicant applied for the amendment of the said ruling. As if that was not enough there is no proof that the same was amended as claimed as the amended attached to the application was correction made with a pen without being initiated by the maker. Worse still while the amended ruling was availed to the applicant on 14<sup>th</sup> November as claimed, yet he filled this application on 09<sup>th</sup> January 2020 which is an unimaginable which he prayed this hounorable court not to condone.

He submitted that it is his submission that this application be granted, there is not the slightest chance that his appeal will succeed because the District Land and Housing Tribunal for Katavi in Misc. application No. 16 of 2019 did just by not granting applicant his prayers has he failed to show sufficient reasons even proof as to why he failed to set aside exparte judgement.

He finally said it is the respondent prayer that the application be dismissed with costs and ruling and orders of the tribunal be maintained.



The question is whether the application before this court has merit.

It is now a cardinal principle of law that when the time has expired, there must be explanation or material upon which the court may exercise its discretion to extend it. This stance has been taken by this court and Court of Appeal in a number of decisions. See the case of **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. L.t.d; Civil Application No. 96 of 2007** CAT, (unreported), **Godwin Ndeweri and Karoli Ishengoma vs. Tanzania Indil Corporation (1995) TLR 200** and **Republic vs. Yona Kaponda and 9 others (1985) TLR 84** and **Tanga Cement Company Limited v. Jumanne D. Massanga and another, Civil Application No. 6 of 2001.**

In this application before me, through the affidavit as sworn by Elias Julius Kifunda - learned advocate, he averred that the applicant herein was the respondent in land case to wit application No. 25 of 2018 in the District Land and Housing Tribunal for Katavi a case which delivered exparte judgement against the applicant herein.

It was further averred by the learned advocate that on the 29<sup>th</sup> May 2019 he filed an application in the District Land and Housing Tribunal for

- Katavi for the exparte judgement to be set aside out of time, but the same  
^ was dismissed.

Mr. Kifunda averred that after being aggrieved by the said ruling on the 08/ 07/ 2019 he wrote a letter to the tribunal praying for a copy of ruling and drawn order for purposes of appealing to the High Court. A copy of the letter dated 08/ 07/ 2019 attached as annexure "A".

He said while preparing the appeal he noted that the ruling and drawn order he was furnished by the tribunal had mistakes hence stopped the process and started pursuing corrections of the ruling and drawn order.

He further averred that he succeeded to get corrected ruling and drawn order on 14<sup>th</sup> November 2019. Copies of the mistaken ruling and drawn order and corrected ruling and drawn order attached for court's perusal.

He however said upon getting proper copies of the ruling and drawn order of the tribunal the appealing period had already lapsed.

Respondent in her counter affidavit contested that the applicant lodged this application after expiry of 189 days from the day of ruling, therefore the application not sustainable for being made without good and sufficient

reasons. He argued that the appeal has no chance to succeed if an application is allowed.

Having perused the attached annexures "A" and the copies of the ruling and drawn order, it transpires to this court that, the applicant through her learned advocate wrote a letter dated 08. 07. 2019 to the District Land and Housing Tribunal for Katavi which was received on 03. 08. 2019 so as to be furnished with a copy of ruling and drawn order for the purpose of appealing to the High Court with regard to Misc. Land Application No. 16 of 2019.

Also, the copies of the ruling and drawn order depicts typographical errors as explained by the advocate for the applicant, that is applicant herein was named as respondent and respondent herein was named as applicant. There are attached copies of the corrected ruling and the drawn order which prove that the tribunal made correction.

The learned advocate for the applicant in his affidavit as well in his submission in chief submitted that he succeeded to get a copy of corrected ruling and drawn order on 14<sup>th</sup> November 2019, however the record show that he filed this application on 09<sup>th</sup> of January 2020 which is almost 65

days passed and there is no further explanation for the delay, means that he failed to account for such days of delay to satisfaction of this court.

For the reason stated above, I find the applicant has failed to advance good cause sufficient for this court to grant enlargement of time for the applicant to file an appeal. The application is dismissed with costs.

Order accordingly.



**D. E. MRANGO**

**JUDGE**

**21. 05. 2020**

-	Date	-	21.05.2020
-	Coram	-	Hon. D.E. Mrango – J.
	Applicant	}	Absent/without notice
	Respondent		
	B/C	-	Mr. A.K. Sichilima – SRMA

**COURT:** Ruling delivered today the 21<sup>st</sup> day of May, 2020 in the absence of the parties and in the absence of the Advocates without notice.

Right of appeal explained.

  
**D.E. MRANGO**  
**JUDGE**  
**21.05.2020**