

**IN THE HIGH COURT OF TANZANIA**

**LAND DIVISION**

**AT TABORA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 17 OF 2019**

**HAMIS ATHMAN MWIHA ----- APPLICANT**

**VERSUS**

**RAMADHANI ATHMAN MWIHA ----- 1<sup>ST</sup> RESPONDENT**

**DOTTO ATHMANI MWIHA ----- 2<sup>ND</sup> RESPONDENT**

**RULLING**

31/03 & 29/05/20

**BONGOLE J.**

The applicant in this application **HAMIS ATHMAN MWIHA** pursued this Court seeking for the orders that:-

1. This Court be pleased to grant him a leave to file an appeal against the judgment and Decree of Tabora District Land and Housing Tribunal delivered on 05/02/2019 out of statutory time.
2. Costs of this application be provided for and
3. Any other relief(s) that this court deems fit and just to grant

This application comes under section 38(1) of the Land Dispute Courts Act Cap 216 R:E 2002.

The content of applicant's sworn affidavit which I opted to reproduce runs as follows.

1. That he is an applicant in this application thus conversant with the facts he deposed.
2. That, he was the appellant in Land Appeal No. 71/2017 in the District Land and Housing Tribunal for Tabora at Tabora which arose from the decision of Urambo Urban Ward Tribunal in land Case No. 06/2016
3. That, the District Land and Housing Tribunal for Tabora decided in favour of the respondents in Land Appeal No. 71/2017 who are responsible in this application and his right to appeal was fully explained.
4. Being aggrieved with the decision in Land appeal No. 71/2017 his wish was to appeal to this Court but he was not supplied with the copies of judgment and decree though he wrote a letter to the Tribunal on 10/02/2019 to ask for judgment and decree.
5. That after such remainder he was supplied with the copy of judgment and order on 10<sup>th</sup> April 2019.
6. That it is in the interest of justice the application be granted for him to file an appeal out of time since the delay in getting copies of judgment and decree was not his fault.

It is on the above grounds the applicant prays this court to grant him leave to appeal out of time.

In the counter affidavit filed by the first respondent **RAMADHANI ATHMANI MWIHA** he challenged the applicant's application on ground that the applicant failed to adduce sufficient reasons to warrant his application since the law is very clear that the applicant was not supposed to wait for

copies of judgment and decree otherwise he could appeal without accompanying a copy of judgment and decree.

When the application was called for hearing, both the applicant and first respondent appeared in person while the second respondent did not showed up. The applicant adopted his affidavit and the respondent on the other hand argued that the averment in the affidavit are false because the copy of judgment was supplied to them timely and the applicant never appealed timely, he then prayed the application be dismissed.

The issue to be determined by this court is whether the applicant has paraded good cause warranting extension of time.

**In Tanga Cement Company Limited vs Jumanne D Massanga and Amos A. Mwalwanda, Civil application No. 6 of 2001, Nsekela, JA. said**

*"What amounts to sufficient cause has not been defined, from decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant"*

The record as evidenced by annexure HM1 in the applicant's affidavit shows that the judgment of the District Land and Housing Tribunal was delivered on 05/02/2019 then six days later which is 11/02/2019 the applicant wrote a letter to the Chairman of the Tribunal requesting to be supplied with a copy of judgment but the tribunal did not supply him the same until it was late.

Taking into account that the applicant is not a legal expert I see no way he could make his appeal without having on hand a copy of the impugned judgment that he intended to challenge, I find that failure by the appellate tribunal to supply the applicant with a copy of judgment on time was a huge stumbling block on the applicant's pathway.

In view of the aforesaid, I am satisfied that the applicant has demonstrated sufficient reasons warranting the grant of the application. This application is with merits. It is granted with a condition that the applicant must file his intended appeal within 45 days from the date of this order.

Costs to follow the events.

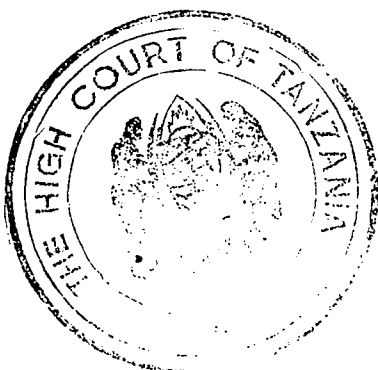


**S. B. BONGOLE**

**JUDGE**

**29/05/2020**

Ruling delivered this 29/05/2020 in the presence of the parties.



**S. B. BONGOLE**

**JUDGE**

**29/05/2020**