

**IN THE HIGH COURT OF TANZANIA  
(IRINGA DISTRICT REGISTRY)  
AT IRINGA**

**MISCELLANEOUS APPLICATION NO. 31 OF 2016**

**DEBORA ENOCK WAPALILA .....1<sup>ST</sup> APPLICANT**  
**FANUEL ENOCK WAPALILA .....2<sup>ND</sup> APPLICANT**  
**DAUDI JOHANES WAPALILA .....3<sup>RD</sup> APPLICANT**  
**ENOCK S. WAPALILA .....4<sup>TH</sup> APPLICANT**

**VERSUS**

**JACOB ENOCK KYENGA .....1<sup>ST</sup> RESPONDENT**  
**SYLEVESTER SOLOMON MBANGA.....2<sup>ND</sup> RESPONDENT**  
**ATHANAS GIDION MBANGA .....3<sup>RD</sup> RESPONDENT**  
**BEATUS K. HONGOLI .....4<sup>TH</sup> RESPONDENT**  
**JACOB C. MBANGA .....5<sup>TH</sup> RESPONDENT**  
**ALEX J. KIPALILE .....6<sup>TH</sup> RESPONDENT**

**RULING**

**KENTE, J:**

This is an application for extension of time with a view to lodging appeal. The application is made under section 41 (2) of the **Land Disputes Courts Act (Cap 216 R.E 2002)** and is supported

by an affidavit deposed to by Mr. Edwin Enosy Swale learned counsel for the applicants.

The main reason given by the applicants in their endeavour to account for the delay to appeal within time is essentially gleaned from paragraph six of Mr. Swale's affidavit where he states thus:-

*".....the delay to lodge an appeal in this court is not, attributed by the applicant's or the advocate's negligence but delay to be supplied with copies of judgment, decree and proceedings from the Tribunal"*

For the sake of brevity, I should hasten to say here that, I will be very brief and confine myself to the most subsential question as to whether the applicants were not timely issued with the copies of judgment and decree within time and consequently disabled from appealing. I will leave the question of the illegality or otherwise of the impugned decision of the trial District Land and Housing Tribunal to be determined at the opportune time.

It is common ground in the instant case that the judgment of the trial District Land and Housing Tribunal which is sought to be

challenged on appeal was handed down on 26<sup>th</sup> July, 2017 in favour of the first respondent herein one Jacob Enock Kyenga. On 27<sup>th</sup> July, 2017 the applicant wrote a letter applying for copies of proceedings, judgment and decree which were eventually availed to them through their advocate on 29<sup>th</sup> September, 2017. Thereafter it is averred that the said copies were sent to Mr. Swale in Dar es Salaam who on 12<sup>th</sup> October, 2017 travelled to Iringa to lodge Misc. Land Application No. 39 of 2017 which was however struck out by this court (per Shangali, J rtd) for want of proper citation of the enabling provision of law.

It is trite law that in any application of the present nature, the applicant is required to account for each day of the delay. (see **Hassan Bushiri Vs. Latifa Lukio Mashayo, Civil application No. 3 of 2007, Court of Appeal of Tanzania** (unreported)). For the purposes of this application, I will seek to determine whether having excluded the period which was spent to procure the copies of judgment and decree, the applicants have convincingly accounted for the days that elapsed from 29<sup>th</sup> September, 2017 when they were issued with said the copies to the day when they filed the application

which was struck out on account of improper citation of the enabling law.

It will be noted and indeed appreciated that immediately after delivery of the judgment, the applicants applied for copies of the same and the decree on 27<sup>th</sup> July, 2017 which was only one day after delivery of the impugned judgment. They were however issued with the said copies on 29<sup>th</sup> September, 2017 that is to say, after sixty six days. Counsel for the respondents contends that the said copies were certified on 18<sup>th</sup> September, 2017 and therefore he would say that the applicants were to blame for not having gone to collect the same immediately thereafter.

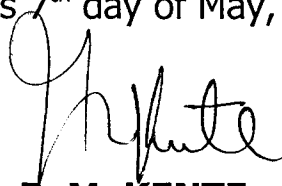
With due respect to the respondent's counsel, I do not agree with him. As correctly submitted by Mr. Swale learned counsel for the applicants, with all fairness, it is the trial District Land and Housing Tribunal which appears to have caused the delay by not timely availing the applicants with the necessary documents and not the applicant's inaction or lack of diligence. For we should not expect a litigant who is placed in the applicant's position to have kept on going to the trial court or tribunal on a daily basis requesting to be issued

with a copy of judgment and decree so as to avoid being caught by the law of limitation. Where, as here, it is demonstrated on a balance of probability that the applicant had promptly acted with diligence and sought to be supplied with the documents required for appeal purposes which were however not forthcoming from the trial Tribunal, both law and fairness would dictate that an application for extension of time within which to appeal should be granted.

On the basis of the foregoing, and without recourse to the second reason which touches on the alleged illegality of the trial Tribunal's impugned decision, I would allow this application and order that the applicants, if they are still desirous of pursuing their intended appeal, should proceed to lodge it within thirty days of this ruling. Costs of this application shall be in the cause.

It is so ordered.

DATED at IRINGA this 7<sup>th</sup> day of May, 2020.



**R. M. KENTE**

**JUDGE**