

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

MISC. LAND APPLICATION NO. 10 OF 2019

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 204 of 2016)

**CHRISTOPHER LEONARD.....1ST APPLICANT
NAZALETH E. MWANJISI.....2ND APPLICANT
ANASTAZIA DEGENDA.....3RD APPLICANT
TABIA MWINUKA.....4TH APPLICANT
LAMECK MANDALASI.....5TH APPLICANT
STEPHANO E. NANELO.....6TH APPLICANT
STEVEN MWAMBISA.....7TH APPLICANT**

VERSUS

KHEBHANDZA MARKETING CO. LTD.....RESPONDENT

RULING

Date of Last Order: 15/04/2020
Date of Ruling : 20/05/2020

MONGELLA, J.

The applicants are before this Court seeking to be granted extension of time within which to file an appeal out of time against the decision of the District Land and Housing Tribunal (Tribunal) in Land Application No. 204 of 2016. They appeared in person while the respondent was represented by Mr. Josephat Kazaura, learned advocate. For interest of justice to the

unrepresented applicants the application was argued by written submissions.

In their joint affidavit as well as in their written submission, the applicants alleged that they delayed filing their appeal due to delay in obtaining copies of judgment and decree from the Tribunal. They also claimed that the Tribunal Chairman on the date of pronouncing the judgement misled them to the effect that if they wished to appeal they could do so within 60 days, but while at the High Court they were told that the time as per the 2016 amendment was 45 days for cases emanating from the Tribunals. Their appeal was thus struck out in this court for being time barred hence this application. On those bases they prayed for their application to be granted.

In response to the applicants' submission, Mr. Kazaura argued that the reasons advanced by the applicants are not sufficient. First he argued that the applicants wrongly filed their appeal without seeking leave of the court for extension of time when they delayed while waiting for copies of judgment and decree. He cited the case of **Lewin Benard Mgala v. Lojasi Mutuka Mkondya & Two Others**, Land Application No. 33 of 2017 whereby this Court ruled that the exclusion of time while waiting for copies of judgment is not automatic as a party ought to seek for leave first. He disputed the allegation that the Tribunal Chairman misled the applicants on the time limitation in filing their appeal. He further argued that the applicants cannot use the High Court's decision striking out their appeal as a sufficient cause for their delay as they could as well appeal against that decision.

I have considered the arguments from both parties. The applicants' main reason for the delay is that they were waiting for copies of judgment and decree and that they were misled by the Hon. Chairman on the time limitation in filing their appeal. However, I am not concerned with the period the applicants were waiting for copies of judgment and decree because under the law that amounts to sufficient reason for one delaying to take further action. My concern is on the delay of 45 days from the date their appeal was struck out in this Court on 12th December 2018 to 25th January 2019 when they filed this application in this Court. In **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference no.18 of 2006 (CAT, unreported) the Court held that time should start to run from the last event when the applicant's matter was dismissed, struck out or withdrawn for technical mistakes he committed in pursuing his rights. See also: **Luhumbo Investment Limited v. National Bank of Commerce Limited**, Misc. Civil Application no.17 of 2018 (HC Tabora, Utamwa J.) and **Mohamed Enterprises (T) Ltd v. Mussa Shabani Chekechea**, Misc. Civil Application no. 81 of 2017 (HC Tabora, Utamwa, J.). Thus in my view, the period between the applicants' appeal being struck out in this Court and the date of filing this application constitutes further delay and ought to have been accounted for.

The Court of Appeal in **Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) held an unaccounted delay of 25 days to be seriously calling the diligence of the applicant in question. The Court insisted that each day of the delay has to be accounted for something which does not feature in the applicants'

affidavit or submission regarding the further delay of 45 days. See also: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (CAT-unreported) quoted in **Moto Matiko Mabanga v. Ophir Energy PLC, Ophir Services PTY LTD & British Gas Tanzania Limited**, Civil Application No. 463/01 of 2017.

In the upshot, this Court finds that no reasons at all have been advanced by the applicants in accounting for the further delay after their appeal was dismissed in this Court on 12th December 2018 to warrant granting of their application. The same is thus dismissed with costs.

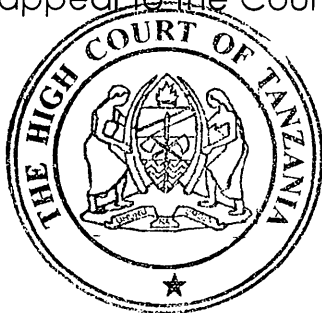
Dated at Mbeya on this 20th day of May 2020.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 20th day of May 2020 in the presence of the applicants appearing in person, and Mr. Josephat Kazaura for the respondent.


L. M. MONGELLA
JUDGE

Right of appeal to the Court of Appeal has been explained




L. M. MONGELLA
JUDGE