

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA**

MISC. LAND APPLICATION NO. 01 OF 2020

(From Application No. 56 of 2019 of the District Land and Housing Tribunal, Mbeya)

**OSCAR EDGAR.....APPLICANT
VERSUS
MAKKA FRANK KIMEMERESPONDENT**

R U L I N G

Date of Last Order: 03/04/2020

Date of Ruling: 19/05/2020

NDUNGURU, J.

The applicant in this application one Oscar Edgar is seeking for the following orders:

- (i) That the leave be granted to the applicant to appeal out of time against the judgment and decree of the District Land and Housing Tribunal dated 17/04/2019 in Land Application No. 56 of 2019.
- (ii) Costs be in the course.
- (iii) That the court be pleased to issue any other order it deems fit and proper.

This application is brought under Section 41 (2) of the Land Disputes Courts Act (Cap 216 Revised Edition 2002) as amended by the Written Laws (Misc. Amendment) Act No. 02 of 2016. Further, the application is supported by the affidavit of the applicant. Upon reception of the Chamber Summons the respondent resisted the application by filing counter affidavit.

The applicant's grounds for the delay to file an appeal in time are contained at paragraph 3, 4, 5 and 6 of the affidavit. In paragraph three of the affidavit the applicant states after the delivery of judgment on 17/04/2019, the next date, the applicant wrote a letter applying to be supplied with the copies of judgment, decree and proceedings. That on 29/05/2019 he wrote a reminder but he received the certified copies on 20/06/2019 by then he was already out of time.

In paragraph 4 and 5 of the affidavit the applicant states that he received the certified documents on 20/06/2019. That on 22/06/2019 he feel sick and on 25/06/2019 he became serious and when he diagnosed it was revealed that he had blood pressure. In paragraph 6 the applicant states that have revamped from his sickness he filed the application for extension of time which was struck out by the court on legal technical errors.

The background information to the application is that the matter originated from the District Land and Housing Tribunal of Mbeya at Mbeya in the Land Application No. 56 of 2019 where the respondent won the suit. The tribunal declared the applicant a trespasser as he breached the lease agreement. Thus was ordered to vacate the premises and pay defaulted rent and damages.

That applicant being aggrieved with the decision which was delivered on 17th day of April, 2019 failed to file an appeal within the prescribed time. He is now before this court seeking for extension of time.

When the application was due for hearing the applicant appeared in person (Unrepresented) while Ms. Kasebwa learned counsel represented the respondent.

Submitting for the application, the applicant was of the argument that, the judgment of the tribunal having been delivered on 17/04/2019, the next day wrote a letter requesting to be supplied with the copies of judgment, decree and proceedings for appeal purpose but in vein. That on 29/05/2019 he wrote a reminder and tried his best to make follow up but his zeal was fruitless. The applicant submitted that he got the said copies on 26/06/2019 while he was already out of time.

The applicant was of further contention that on 22/06/2019 he feel sick and on 25/06/2019 having been diagnoses was has severe blood pressure. That having revamped he on 17/07/2019 filed an application for extension time which was struck out on technical ground. The applicant submitted that the delay to be supplied with the documents which are prerequisite on appeal and the fact that he feel sick are good and sufficient reasons for the court to grant the extension of time.

Resisting the application Ms. Kasebwa was of the argument that judgment subject of this application was delivered on 17/03/2019 and that same was ready for collection on 13/06/2019 after certification and that the applicant was required to file his appeal within 45 days from the date of delivery. That the time of appeal expired on 01/06/2019.

The counsel submitted that the applicant was required to account each day of delay from 01/06/2019 up to the time of filing the application. Cementing her argument the counsel referred this court to the following cases: **Finca (T) Limited and Another vs. Boniface Mwalusika**, Civil Application No. 589/12 of 2018, **Abdu Issa Bano vs. Mauro Daolio**, Civil Application No. 503/02 of 2017 and **Dar es Salaam City Council vs. S. Group Security Co. Ltd.**, Civil Application No. 234 of 2015.

Ms. Kasebwa was of the contention that Application No. 52 of 2019 which was struck out was filed on 19/07/2019 the applicant had to account from 20/06/2019 till 17/07/2019. That the applicant had never told the court when he started suffering and that what is attacked as a medical document does not have patient number it shows that the applicant fell sick on 28/06/2019, then 03/07/2019, 07, 07, 2019 and 12/07/2019 it neither has name nor description, thus the fact that the applicant feel sick is a mere concoction, thus urged the applicant's application be dismissed on failure to show sufficient cause.

In his rejoinder the applicant was of the submission that he was attending the tribunal in application for stay of execution but it was not during the time he was supposed to file appeal. He went further saying that the medical report annexed reveals that he went for medical treatment for blood pressure on 25/06/2019. That though the documents were certified on 13/06/2019 he was supplied on 20/06/2019 notwithstanding the follow up he made. He told this court that he was availed with the said documents on 20/06/2019 that was on Thursday and on 23/06/2019 he started fell sick and went to the hospital. He attended treatment from 25/06/2019 up to 16/07/2019 that on 17/07/2019 when he got improved found the advocate and on

22/07/2019 filed the application. Thus the applicant urged his application be granted.

The point for determination is whether the applicant has shown sufficient cause to move this court to grant the application.

That it be clearly noted that in this kind of applications the grant or refusal of the extension of time is the discretion of court. But such discretion must be exercised judiciously. This position has been articulated in a number of cases decided by the supreme court of land.

The duty of the applicant is to show sufficient cause which impeded him to appeal on time.

In the instant application, the applicant in his affidavit has raised two causes which impeded him to appeal on time. The first ground is he delayed to be supplied with the necessary documents requisite for appeal process and the second ground is that the applicant immediately upon being supplied with the said copies of documents (judgment, decree and proceedings) fell sick for quite sometime.

Starting with the first reason which is the delay to be supplied with the copies decree and judgment. The law is clear that the time awaiting to be supplied with the decree must be excluded in computing for the period of limitation. The applicant in the present application was

supposed to appeal within 45 days from the date of judgment. Section 19 (2) of the Law of Limitation Act (Cap 89 Revised Edition 2019) provides:

"(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment complained of was delivered, the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."

In view of what I have endeavored to show above, and in the light of Section 19 (2) (supra), it follow that the period between 17/04/2019 and 20/06/2019 when the appellant eventually obtained a copy of decree and judgment is excluded in computing time or accounted for.

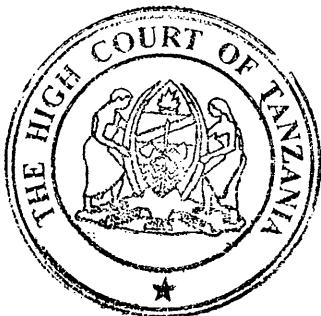
It is the submission of the applicant that having received a copy of decree on 20/06/2019, on 22/06/2019 (two days later) started feeling sick. From there he attended treatment up to 16/07/2019 and having got improved on 17/07/2019 he looked for advocate and on 22/07/2019 filed an application for extension of time. To my view the applicant was very prompt and diligent in persuing his case. There was no undue delay.

In the circumstances I am of the view that the applicant has carried his burden of showing sufficient reasons to move this court to exercise its legal and noble discretion.

I hold that the applicant has shown sufficient cause which impeded him to file the appeal. I hereby grant extension of time. The applicant to file his appeal within 45 (forty five) days from the date of this ruling.

No order as to costs.

It is so ordered.




D. B. NDUNGURU
JUDGE
19/05/2020

Date: 19/05/2020

Coram: D. B. Ndunguru, J

Applicant: Present in person

Respondent:

For the Respondent: Mr. Luko Deda – Advocate

B/C: M. Mihayo

Mr. Luko Deda – Advocate:

I hold brief of Ms. Kasebwa advocate the case is for ruling, we are ready.

Applicant:

I am ready.

Court: Ruling delivered in the presence of Mr. Luko Deda advocate holding brief of Ms. Kasebwa for respondent and the applicant.




D. B. NDUNGURU
JUDGE
19/05/2020