

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 85 OF 2018**

*(Arising from Land Application No. 68 of 2006 District Land and  
Housing Tribunal at Kibaha)*

**WALHADI NGOLI.....1<sup>ST</sup> APPLICANT**

**PERIOD NGOI.....2<sup>ND</sup> APPLICANT**

**PRISCUS NGOI.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**AIDA ADAMSON KALINGA.....RESPONDENT**

**RULING**

*Date of last order: 29/10/2019*

*Date of Ruling: 18/6/2020*

**S.M. KULITA, J.**

This is an application for an extension of time for leave to appeal to the High Court. The application is made under section 41(2) of the Land Dispute Settlement Act [Cap 2 RE 2002]. It is accompanied with a chamber summons and the affidavit deposed by **WALHADI NGOLI**.

The applicants seek for extension of time to file an appeal at High Court against the decision of the District Land and Housing Tribunal at Kibaha in the Land Application No. 68 of 2016 for the

reasons stated from paragraph 2 to 6 of the affidavit. The application was argued by way of written submissions. Both parties are unrepresented.

In their submissions the applicants stated that they were respondents in the Land Application No. 68 of 2016 at Kibaha District Land and Housing Tribunal where the decision was entered in favour of the respondent herein.

The respondents further stated that it took five months for the judgment and decree to be supplied to them after several attempts to obtain the same until 14/09/2018 when they obtained copies of judgment and decree without the proceedings. At last the time for them to lodge their appeal was found lapsed.

They submitted that for the extension of time to be granted a person is required to show good cause. For them the delay of the tribunal to supply them with the copy of proceedings is a sufficient ground for this court to grant the applicants extension of time. They cited the following cases to support their argument;

- 1. REGIONAL MANAGER TANROADS KAGERA V. RUAHA CONCRETE COMPANY LIMITED, Civil Application No. 96 of 2017, CAT at DSM,**

**2. LEONARD RUSUMBANYA NGWANIJE V. FIRST NATIONAL BANK LIMITED, Misc. Commercial Application No. 66 of 2018, HC DSM Registry,**

**3. LYAMUYA CONSTRUCTION COMPANY LIMITED V. BOARD OF TRUSTEE OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, Civil Application No. 2 of 2010, CAT.**

**4. MANTRA (T) LIMITED V. RAYMOND COSTA, Civil Appeal No. 74 of 2014 CAT at Mwanza.**

They submitted that the delayed was not attributed by them but the tribunal's failure to supply them with the said documents despite their efforts to make follow ups.

The applicants further stated that immediately after receiving the copies of proceedings and decree without the proceedings they contacted a lawyer who informed them that they were already out of time but there are overwhelming chances for their appeal to succeed as the decision of the tribunal is tainted with the illegalities which also amounts to good cause. The applicants cited the case of **PRINCIPAL SECRETARY, MINISTRY OF DEFENCE AND NATIONAL SERVICE V. DEVRAM VALAMBIA (1992) TLR 185** to support that argument.

In conclusion the applicants prayed for this application to be allowed in accordance with the reasons advanced in their submissions.

Replying the applicants' submission the respondent started by praying for the reasons contained in her affidavit to be adopted as part of her submissions. She then submitted that the Tribunal entered a judgment in her favour on 20<sup>th</sup> March, 2018. She said that the copies of Judgment and Decree were supplied to the applicants on 14<sup>th</sup> September, 2018 but the application at hand was filed on 28<sup>th</sup> November, 2018 that is over two months period for the reason that they were not supplied with the copy of proceedings. She added that there is no provision of law which requires the copy of proceedings to be attached in order to file the appeal. She said that the delay was deliberately negligence. The respondent submitted that the applicants have failed to account for each day of delay from 14<sup>th</sup> September, 2018 when they were supplied with the copies judgment and decree to 27<sup>th</sup> November, 2018 when the application was filed before this court.

The respondent further stated that the applicants' argument that they wrote a letter to the tribunal requesting to be supplied with the said documents has no legal weight as the said letter does not bear any stamp of the tribunal to prove that it was actually

written thereto and the same was received. The applicant is of the view that the said letter adds no value to the applicants' reasoning.

The respondent further stated that the applicants have failed to show how the decision of the tribunal was tainted with the alleged illegalities. She said that the applicants were supposed to state on that. To support her argument the respondent cited the case of **NGAO GODWIN LOSERO V. JULIUS MWARABU, Civil Application No. 10 of 2015, CAT at Arusha.**

The respondent concluded her submission by stating that the applicants have failed to demonstrate sufficient cause for extension of time as the delay was accelerated by negligence, she therefore prayed for dismissal.

In the rejoinder the applicants submitted that they have sufficient cause to be granted extension of time. They said that they are lay persons, they were not in the position to frame their grounds of appeal therefore they needed legal assistance to do so. The applicants maintained their view that the delay to be supplied with the copies of the judgment, decree and proceedings was out of their control thus they were not negligent.

Having carefully considered the submissions of both parties, I have this to say; it should be noted that the power to grant extension of time is the discretion of the court but it should be exercised judiciously upon the party showing good cause for delay as it was stated in the case of **BENEDICT MUMELO V. BANK OF TANZANIA, Civil Appeal No. 12 of 2002 CAT at DSM** where the court held;

*".....An application for extension of time is entirely in the discretion of the court to grant or refuse it, and the extension of time may be granted where it has been sufficiently established that the delay was with sufficient cause"*

In this matter the applicants submitted that the delay was caused by the tribunal which did not supply them with the necessary documents which would enable them to lodge the appeal in time. Under paragraph 4 of the affidavit as well as in their submission the applicants stated that they were supplied with the said documents on the 14<sup>th</sup> September, 2018 without the proceedings. I partly agree with the applicants submission that obtaining the copies of judgment and decree was beyond the applicants control and that is enough to amount to a sufficient cause, however the applicants have repeatedly insisted in their submission that they could not lodge the appeal immediately after receiving the

judgment and decree because the copies of the proceedings were not ready. On that I find that the applicants have been negligent since the filing an appeal does not need to wait for the copy of proceedings.

I went through the affidavit which was presented for filling on the 28<sup>th</sup> November, 2018 and noticed that it was filed about 75 days later from the date that they were supplied with the copies of judgment and decree. The applicants have not established an account for the delay after obtaining the said copies of decree and judgment on the 14<sup>th</sup> September, 2018. Waiting for the copy of proceedings is not a sufficient cause as it is not a legal requirement for filing appeal at High Court or any other court. The applicants stated that they are lay persons but ignorance of law is not a defence, I find that reason with no legal weight.

In her submission the respondent submitted that the applicants were supposed to account for each day of delay. Leaving behind an account of delay from the 14<sup>th</sup> September, 2018 to 28<sup>th</sup> November 2018, about 75 days as stated above should be termed as an act of negligence on the part of the applicants. Therefore the applicant's failure to give an account of delay from the date of receipt of copy of the decree and judgment amounts to negligence.

In that regard I am of the view that the applicants' failure to file their application for extension of time immediately after obtaining the copies of judgment and decree amounts to negligence on the part of the applicant and regarded to have failed to act promptly. Under those circumstances this court cannot grant the extension of time. In the case of **BUSHIRI HASSAN V. LATIFA LUKIO MASHAYO, Civil Application No. 3 OF 2007, CAT (Unreported)** it was held;

*"Delay even of a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to been taken".*

In the upshot I find this application with no legal weight for this court to grant extension of time. I hereby dismiss it with costs.



**S.M. KULITA**

**JUDGE**

**18/06/2020**