

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

MISC. LAND APPL NO. 6 OF 2019

(Arising from the judgement of the District Land and Housing Tribunal for Temeke in Land Application No. 44 of 2016)

LOGRINE CHARLES KESSI.....APPLICANT

VERSUS

CHARLES HENRY KESSI.....1ST RESPONDENT

**MARIAM MKADAM MWINSHEHE
As Guardian of MKASIWA CHARLES
KESSI & BARAKA CHARLES KESSY** }2ND RESPONDENT

RULING

MASABO, J.:

Logrine Charles Kessi is aggrieved by the decision of Kirumbi A.R in Land Application No. 44 of 2016 dated 27/11/2019 before the District Land and Housing Tribunal for Temeke. She intends to appeal to this court but the time within which to appeal lapsed before she filed her appeal hence this application. In her chamber application made under section 14(1) of the Law of Limitation Act, Cap 89 R.E 2002 she is praying for an order for extension of time within which to file an Appeal out of time. The application is supported by an affidavit of the Applicant in which she deposed that she failed to file the application within time as she had not obtained the copy of judgment and decree. She deposed further that, that she was furnished with the judgment and decree on 16th January 2020 and on 22nd January 2020 she filed this application. The Application was contested by the 2nd Respondent through a

counter affidavit filed by in court on 6th March 2020. The 1st Respondent did not oppose the Application in spite of being dully served.

When the Application was called for mention on 10th March 2020 Ms. Stella Simkoko, learned counsel for the Applicant proposed that hearing be conducted in writing. The prayer was supported by Mr. Is-haq Yusuph, counsel for the 2nd Respondent. Having considered the prayer, the Court duly granted it. A schedule order for filing written submission was subsequently agreed and issued by this court. In that scheduled order the Applicant was to file her written submission on or before 24/3/2020. The 2nd Respondent was to file her reply to the written submission on or before 8/4/2020 and rejoinder if any by the Defendant was to be filed on 14/4/2020. The matter was subsequently fixed for ruling on 27/4/2020.

In compliance with the court order, Ms. Simkoko filed his submission in chief on 24/3/2019 but for the reasons not known to this court, the Respondents defaulted filing of submission and have rendered no explanation to this court. Under the circumstance, I find compelled to determine the effect of the 2nd respondent's conduct and the consequences thereto. It is now a settled law in our country that the practice of filing written submission is equivalent to an oral hearing of the appeal or application. Therefore, failure to comply with a schedule order for filing written submission without sufficient cause is equal to non-appearance (See **Fatuma Khassim Vs. Tabu Proper (PC) Criminal Appeal No. 12/2002 HC - Dar-es-Salaam Registry** (*unreported*); **Hidaya Zuberi Vs. Boque Mbwana, (PC) Civil Appeal No. 98 of 2003, Dar-es-Salaam Registry** (*unreported*)). Thus, in the instant case, the 2nd Respondent is deemed to have forfeited her right to address the court on his opposition to

the application. Considering that the 1st Respondent is also in default, the 2nd Respondent's conduct gives the Applicant a right to prove his application *ex parte* both Respondents.

This notwithstanding, it is to be noted that Section 14 (1) of the Law of Limitation Act under which this Application is preferred, vests this Court with discretion to extend this time if it finds that there is a good cause for the delay. It is therefore, the duty of the Applicant to show a good cause upon which the Court can exercise its discretion judiciously (see *Ratnam v. Cumarasamy* (1964) 3 All ER 933). Thus, even in uncontested applications such as the instant one the Applicant must prove to the satisfaction of the Court that there is a good cause for the delay. Thus, I am invited to determine whether or not the Applicant had demonstrated a good cause to warrant the extension of time.

There is no universal definition of what constitutes a good cause but the same may be established by considering such factors as the length of delay, ie whether or not the application has been brought promptly; whether the Applicant acted with diligence, whether the Applicant has sufficiently accounted for the days of delay (see **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Limited** Civil Application No. 96 of 2007, Court of Appeal of Tanzania; **Tanga Cement Company Limited v Jummanne D. Massanga and Other**, Civil Application 6 of 2001, Court of Appeal of Tanzania and **Leornad Maeda and Another v. Ms. John Anaeli Mongi and Another**, Court of Appeal of Tanzania Civil Application No. 31 of 2013 (unreported).

In the instant application the Applicant has assigned only one reason for delay, that is, delay to be furnished with the copy of judgment and decree. He has argued that upon the judgment being pronounced on 27/11/2018; on 4/12/2018 the Applicant requested to be supplied with the copy of the decree but the same was not furnished to him until 16/1/2019. Based on this he has reasoned that the delay is technical delay as per **Fortunatus Masha v William Shija and Another** [1995] TLR 154, and **Vodacom Foundation versus Commissioner General TRA**, Civil Application No. 107/20 of 2017, Court of Appeal of Tanzania as Dar es Salaam (unreported). Further he has submitted that, after the judgment and decree were supplied to him on 16/1/2019 he engaged a lawyer who on 22/1/2019 managed to file this Application in court hence the total time of delay is 4 days and two of which fell on weekends.

Upon a thorough scrutiny of the record, I am satisfied with the Applicant's submission regarding technical delay. The law accords a solid protection to a litigant whose reason for delay to take a necessary legal action owing to the delay in being furnished with the copy of judgment and decree. Section 19(2) of the Law of Limitation Act, Cap 89 R.E 2002 explicitly provides for exclusion of exclusion of days during which the appellant was waiting to be furnished with the judgment and or decree: It states that:

19 (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite

for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded

This provision is a common subject in our courts and there is currently a Of authorities on this subject including case of **Registered Trustees of the Marian Faith Healing Centre@ Wanamaombi vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, CAT at Dar es Salaam, Civil Appeal No 64 of 2007 (unreported) and **Sospeter Lulenga Vs. The Republic**, Criminal Appeal No. 107 Of 2006- CAT at Dodoma. In all these cases it has been consistently held that the days upon which the Applicant was waiting to be furnished with the judgment and decree should be automatically excluded from computation of time. In **Registered Trustees of the Marian Faith Healing Centre@ Wanamaombi** (supra) the court had this to say:

“in view of what we have endeavored to show above, and in the light of section 19(2) (supra) it follows that the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree ought to have been excluded from in computing time. Once that was excluded, it would again follow that when the appeal was lodged on 19/12/2003 it was in fact and in law not time barred” [emphasis added]

In the instant case, the appeal ought to be filed within 45 days which lapsed on 10/1/2019. At this time the Applicant herein was still waiting to be availed with the judgement and decree. When the above provision is applied and the period between 27/11/2018 and 16/1/2019 is excluded from computation, it

would follow that, when this Application was lodged on 22/1/2019, the Applicant was well within time.

Accordingly, I allow the application with costs. The appeal is to be filed within 14 days after this ruling.

DATED at DAR ES SALAAM this 18th day of July 2020



J.L. MASABO
JUDGE

