

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPL. NO. 118 OF 2019**

**VICTOR WILLIAM MEENA.....APPLICANT**

**VERSUS**

**ITINDE MARWA.....1<sup>ST</sup> RESPONDENT**

**ARUSHA CITY COUNSEL.....2<sup>ND</sup> RESPONDENT**

**RULING**

**07/08/2020 & 11/08/2020**

**GWAE, J**

The applicant above has, by way of a chamber summons, lodged the present application under the provisions of Section 41 (2) of the Written Laws (Miscellaneous Amendment Act No. 2 of 2016 read together with Section 41 of the Land Disputes Court Act, Cap 216 of 2002 seeking the indulgence of this court to extend time to file an appeal against the ruling and order of the District Land and Housing Tribunal for Arusha (Hon. F. Mdachi), delivered on the 23th September 2019.

The application is supported by the sworn affidavit of Mr. Jacob Malick, the respondents did not file their counter affidavit.

At the hearing of this matter the applicant enjoyed the legal services from **Mr. Elidaima Mbise** (adv.) while the 1<sup>st</sup> and 2nd respondent were represented by **Mr. Nangawe (adv)** and **Ms. Kisarika** (adv.) respectively

In his oral submission the applicant prayed for the adoption of his affidavit whereas Ms. Kisarika did not object the application.

Since this application is for extension of time to enable the applicant to appeal out of the prescribed time, it is obvious that the main issue for determination by this court is whether the applicant has established "sufficient or good" reasons for this court to exercise its discretion in granting the sought extension of time.

It is trite law that to grant or refuse extension is entirely in the discretion of the court. Such discretion is judicial and it has to be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily (**see: Yusufu Same & Anor v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported-CAT)).

In the matter at hand, at paragraphs 6,7,& 8 of the applicant's affidavit, the applicant has established the reason for the failure to file his appeal on time being a delay to be availed with copies of the ruling and order from the trial Tribunal. The applicant has also attached copies of the letters written to the Tribunal requesting for the supply of the said copies as per the applicant's request letters attached as **VM 1**. The applicant has further stated that, after a close follow ups, he was finally availed with the copies of the ruling and order on 12/11/2019. He thus found himself outside the prescribed time of forty five days (45) as provided in section 41(2) of the Written Laws (Miscellaneous Amendments) (No.2) of 2016.

More so I am not made to believe that the applicant was out of period since the time he requested for supply of drawn order and ruling

and when he was actually availed with the same is excluded as per section 19 (2) of the Law of Limitation Act, Cap 89, R. E, 2002 as time would be reckoned from the date when the applicant was supplied with necessary copies, exclusion of computation.

I therefore find that, the reason for delay established by the applicant was beyond his control and he cannot be blamed on it. Further to that the respondents have not objected this application, therefore I find no reason to refuse granting this application. The application is hereby granted. The applicant is to file his appeal within **ten (10)** days from the date of this ruling.

It is so ordered.



  
**M.R.GWAE**  
**JUDGE**  
**11/08/2020**