

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

MISC. LAND APPLICATION NO. 40 OF 2020

*(Originating from DLHT Kigoma Land Application No. 38/2016 Before:
M. Nyaruka - Chairman)*

1. MUNGANO SACCOS LIMITED
2. JESCA SIMON DEHEYE
3. YUSUPH REHAN HASSAN } **APPLICANTS**

VERSUS

LAMECK DAUD LIBELI..... RESPONDENT

RULING

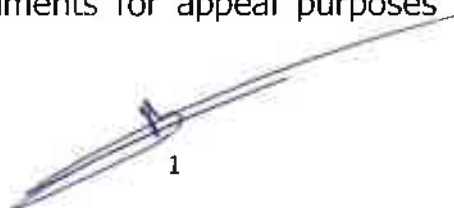
7th Oct. & 6th Nov. 2020

A. Matuma, J

The applicants are seeking extension of time within which to appeal out of time against the judgment of the District Land and Housing Tribunal for Kigoma at Kigoma, Land Application No. 38/2016.

At the hearing of this application the applicants were represented by Mr. Eliuta Kiviyro learned advocate while the Respondent was represented by Mr. Silvester Damas Sogomba learned advocate.

Mr. Kiviyro learned advocate submitted that the delay to appeal in time by the Applicants was due to failure of the trial tribunal to supply them with the necessary documents for appeal purposes i.e. judgment and decree.



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He argued that the judgment was delivered on 03/7/2020 but they were supplied with it on 29/8/2020 which was already out of the prescribed time for appeal. He further argued that even when they were supplied with the copy of the judgment, the decree was missing and they thus wrote a letter to request the same for the intended appeal.

Mr. Sogomba learned advocate on his party had no problem with the period lost by the applicants in waiting for the copy of the judgment and decree from the trial tribunal. He however argued that the applicants have not accounted for the period between 28/8/2020 when the judgment was ready for collection and to the time when this application was filed on the 16/9/2020 which is almost 21 days. He thus called this Court to dismiss this application on account that the applicants had dilatory conducts from when they received the judgment to when they brought this application.

In his short rejoinder Mr. Kiviyiro argued that they received the judgment without a decree which necessitated them to write a letter to the tribunal so that they could be supplied with it as a necessary attachment to the appeal.

From the arguments of the parties as herein above reflected it is obvious that the parties are not at issue on the fact that the Applicants were not timely supplied with the stated documents and therefore they could not appeal in time.

The only dispute between them is whether the applicants have accounted for the period between 28/8/2020 when the judgment was ready for collection and 16/9/2020 when the instant application was filed.

Mr. Kiviyiro stated both in his oral submission before me and in the affidavit accompanying the chamber summons that the impugned judgment was

supplied to them it alone without a decree and thus they wrote to the tribunal to request the same.

I have seen the said letter attached to the application to that effect and I have no reason to disbelieve his submission. The respondent has either not countered such fact.

As rightly submitted by Mr. Kiviyiro under the provisions of Order XXXIX Rule (1) of the Civil Procedure Code, Cap.33 [R.E 2019], the decree is a necessary attachment to the memorandum of appeal. With this provision in mind the Applicants wrote to the tribunal to have them supplied with the decree which was not supplied to them along with the judgment.

In the circumstances, I find the applicants to have not been inordinate. They reasonably took all the necessary steps in processing the documents for appeal purposes but they got supplied when the time for appeal had already expired. That was beyond their control and they should not be blamed as it was held in the case of ***Guardian Limited and Another versus Justin Nyari, Civil Application No. 2 of 2015 (CAT)***.

I therefore, grant this application and extend twenty-one (21) days to the Applicants from today within which an appeal be lodged.

As neither party contributed to the delay, I do not grant costs to either party.

It is so ordered.




A. Matuma

Judge

6/11/2020