

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

**MISC. LAND APPLICATION NO. 37 OF 2019.**

**(From Land Application No. 91 of 2018, in the District Land and  
Housing Tribunal for Mbeya, at Mbeya).**

**SIMBINDA KASIMBILI.....APPLICANT**

**VERSUS**

**JOSEPH MWASIBULA.....RESPONDENT**

**RULING**

**02/07 & 01/10/2020.**

**UTAMWA, J:**

The applicant in this application, SIMBINDA KASIMBILI, applied for extension of time to file an appeal out of time against a judgment (impugned judgement) of the District Land and Housing Tribunal for Mbeya, at Mbeya (the DLHT) in Land Application No. 91 of 2018. The application is made under section 41 (2) of the Land Disputes Courts Act, Cap. 2002 as amended by Act No. 2 of 2016.

The reasons for this application, as shown in the affidavit supporting it are that, the applicant was not issued with the copy of the impugned judgment despite the fact that, he had written to the DLHT requesting for the same. He obtained the copy on the 2<sup>nd</sup> day of May, 2020. He was also sick and he attended in clinic. He attached with the affidavit, medical documents to prove his sickness.

In his counter affidavit, the respondent objected the application essentially on the grounds that, the applicant's reasons for delay are false. The applicant did not also attach any notice of appealing to this court.

When the application was called upon for hearing, both parties were not legally represented. They thus, relied upon their respective affidavits and left it for the court to decide the application.

I have considered the record and the law. In my view, since this is an application for extension of time, it must be guided by the law on extension of time. This branch of the law guides that, an applicant must adduce sufficient grounds before the application is granted; see the decisions by the Court of Appeal of Tanzania (CAT) in the case of **Mumello v. Bank of Tanzania [2006] 1 EA 227**. The major issue before this court is therefore, whether the applicant in the application at hand has adduced sufficient reasons for this court to grant the application.

One of the grounds for this application as shown earlier, was that, the DLHT did not issue to the applicant, the copy of the impugned judgment timely. In my view, this reason is supported by the record. It is clearly indicated in the record of the DLHT that, though the impugned judgment was delivered on the 27<sup>th</sup> February, 2019, its copy was certified by the DLHT as true copy of the original on 4<sup>th</sup> April, 2019. Section 41 (1) of Cap. 216. Provides that, appeals of this nature have to be filed before this court within 45 days from the date of delivering the judgment of the DLHT against which the appeal is sought. It follows thus, that, about 35 days had lapsed from when the impugned judgement was delivered to when the DLHT certified the copy thereof.

The law guides that, in computing time limitation, the time that was necessary in obtaining the copy of judgment or decree has to be excluded; see section 19 (2) of the Law of Limitation Act, Cap. 89 R. E. 2002 (Now R. E. 2019). According to the record, the applicant filed this application on 3<sup>rd</sup> May, 2019. This was a period of less than a month from when the DLHT had certified the copy of the impugned judgment. The applicant thus, acted promptly, even before the expiry of the time for appealing. This follows the fact that, the reckoning time was the date for the certification of the copy of the impugned judgment.

In fact, for the facts and law highlighted above, the applicant could have filed his appeal without even applying for extension of time. This view is based on some recent development of the law which has shown light, though this new stance was underscored in criminal proceedings. The CAT in the cases of **The Director of Public Prosecutions (DPP) v. Mawazo Saliboko @ Shagi and Others, Criminal Appeal No. 384 of 2017, CAT at Tabora** (unreported) and **Samuel Emmanuel Fulgence v. Republic, Criminal Appeal No. 4 of 2018, CAT, at Mtwara** (unreported) interpreted the provisions of section 361 (1) (b) of the Criminal Procedure Act, Cap. 20 R. E. 2002 (Now R. e. 2019), hereinafter called the CPA in short. The **Samwel Emmanuel case** followed the case of **Aidan Chale v. Republic, Criminal Appeal No. 130 of 2003 CAT at Mbeya** (Unreported).

The provisions of the CPA just cited above provide that, an appeal to the High Court of Tanzania shall be within 45 days from the date of the impugned judgment. The proviso to such provisions of law guides that, in

computing the period of 45 days the time required for obtaining a copy of the proceedings, judgment or order (henceforth the copies) appealed against shall be excluded. The CAT held in the two precedents just cited above that, in computing the said 45 days for an appeal under such provisions, there must be an automatic exclusion of the time required for obtaining copies.

There is however, a slight difference between the guidance made by the CAT in the **DPP v. Mwazo Saliboko case** (supra) and the **Samuel Emanuel Case** (supra). This is so, especially on the reckoning date in computing the time limitation. On one hand, the former precedent guided that, the reckoning date is the date when the appellant receives the copies (especially where the date of receiving such copies is undisputed). On the other hand, the latter precedent guided that, the reckoning date is the date when the trial court certifies the copies as true copies of the original, i.e. when the same are ready for collection.

In my view, though the guidance in the two CAT precedents cited above were in relation to criminal appeals, it can be applied *mutatis mutandis* in civil matters for the sake an effective promotion of the right to fair trial. This view is based on the following grounds, that fair trial is a fundamental right for parties to court proceedings as enshrined under article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977, Cap. 2 R. E. 2002. These provisions do not discriminate civil cases from criminal cases as far as promoting fair trials is concerned. Moreover, the proviso to section 361 highlighted above carries a similar spirit to that embodied under section 19 (2) of Cap. 89 discussed previously.

Besides, adopting the guidance discussed above in civil matters will constitute an effective compliance to the principle of overriding objective. This principle essentially requires courts to deal with cases justly, to have regard to substantive justice and avoid overreliance on procedural technicalities; see the decision by the CAT in the case of **Yakobo Magoiga Giche re v. Peninah Yusuph, Civil Appeal No. 55 of 2017, Court of Appeal of Tanzania (CAT), at Mwanza** (unreported).


Owing to the above reasons, I apply the guidance in the two precedents of the CAT namely; the **DPP v. Mwazo Saliboko case** (supra) and the **Samuel Emanuel Case** (supra) in the matter at hand. However, since the appellant in the case at hand was a free person and not in any confinement, I take the reckoning date for the time limitation of his appeal to be the date when the copy of the judgment and proceedings were certified as true copies of the original by the DLHT, i. e. when the same was ready for collection.

It is also the law that, where an applicant acts promptly in pursuing his right, the court is entitled to take that promptness as a sufficient ground for granting the prayed extension of time.

Owing to the above reasons, I do not agree with the respondent that the applicant gave false information in his affidavit supporting the application. Besides, the fact that the applicant did not prove that he had filed the notice appeal is irrelevant. This is because, in appeals of the nature under consideration, a notice of appeal is not a legal requirement. Consequently, I answer the issue posed above affirmatively that, the applicant has adduced sufficient reasons for granting this application. I

accordingly grant the prayed application for extension of time. The applicant shall file his appeal within 30 days from the date hereof. Each party shall bear his own costs since it was the DLHT which delayed the certification of the copy of the impugned judgment. It is so ordered.



  
J.H.K. Utamwa  
Judge  
01/10/2020

01/10/2020.

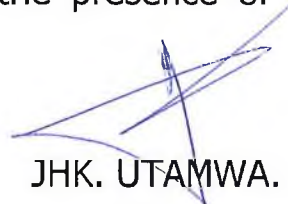
CORAM; Hon. JHK. Utamwa, J.

Applicants: present in person.

Respondent: present in person.

BC; Mr. Patrick, RMA.

Court: Ruling delivered in the presence of the parties, in court this 1<sup>st</sup> October, 2020.

  
JHK. UTAMWA.  
JUDGE  
01/10/2020.