

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. LAND APPLICATION NO. 28 OF 2020
(From the decision of the District Land and Housing Tribunal of
Mbeya in Application No. 196 of 2017)**

**HARUNA KIGUGA.....1ST APPLICANT
EBIATHA MTEGA.....2ND APPLICANT
JOSEPH MWANGIMBA.....3RD APPLICANT
SELINA MGUTE (As administratrix of the
late Paulo Mlinda).....4th APPLICANT**

VERSUS

**SALUM KIGUGA.....1ST RESPONDENT
MAMLAKA YA MJI MDOGO RUJEWANA.....2ND RESPONDENT**

R U L I N G

***Date of last order:* 23/09/2020
Date of Ruling: 22/10/2020**

NDUNGURU, J.

This is an application for extension of time within which to appeal out of time before this Court against the decision of the District Land and Housing Tribunal of Mbeya in Land Application No. 196 of 2017 delivered on 24th day of October, 2019.

The application is by way of chamber summons taken out under Section 41 (2) of the Land Disputes Courts Act (Cap 216 R.E. 2019). The same is supported by the affidavit, duly sworn by the one Luka Ngogo, the

applicants' advocate. Upon being duly served with the application, the respondents filed joint counter affidavit to oppose the application.

When the application was called for hearing, Mr. Abinel M. Zephaniah, learned advocate appeared for the applicants whereas Mr. Fortunatus Z. Mwandu, learned advocate appeared for the respondents. Upon request by the parties, this Court allowed the application be argued by way of written submission and they complied with filing schedule.

Submitting in support of the application, Mr. Zephaniah argued that, soon after delivery of the judgment by the trial tribunal on 24th day of October, 2019, the applicants applied to the trial tribunal to be furnished with the copies of proceedings, judgment and decree for appeal purpose through the letter dated 4th day of November, 2019 only ten days from the date of judgment.

He added that, the same were certified on 18th day of March, 2020 and the applicants collected the said requisite documents on 23rd day of March, 2020 while the prescribe time to appeal had already elapsed. He went on to submit that, the delay to file appeal was caused by the time spent waiting to be furnished with the copies of judgment and decree. He cited the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, Court of Appeal of Tanzania, **Sosten Valencia Mbwagha**

vs. Bria Simbwango & another, Land Appeal No. 69 of 2019, High Court (both unreported) to support his contention.

Also, the counsel for the applicants referred this Court to the Section 19 (2) of the Law of Limitation Act (Cap 89 R.E. 2019) and Order XXXIX Rule 1 of the Civil Procedure Code (Cap 33 R.E. 2019) to cement his submission. In conclusion, he prayed for the Court to grant extension of time to file an appeal so as the applicants can exercise their constitutional right to appeal and be heard.

In rebuttal, Mr. Mwandu submitted that, the applicants were within time for lodging the appeal without applying for extension of time. He added that, the applicants spent only 17 days from the date of the certification of the requisite documents to the date when they filed this present application hence the applicants were within time as per Section 41 (2) of the Land Disputes Courts Act (Cap 216 R.E. 2019).

He further submitted that, since their request is equal to asking something that they already have at the time of applying for it. Also, he contended that, the grant of this application would be equal to defeating clear provision of the law and decisions of the Court. He went on to submit that, all cases cited and relied by the counsel for the applicants are of no help to them. Finally, he prayed for the Court to dismiss this application with costs.

In rejoinder, Mr. Zephaniah, still maintained what is submitted in submission in chief. He added that, currently there are contradictory schools of thought on whether the position of Section 19 (2) of the Law of Limitation Act (supra)) is automatic. He went on to submit that, there are those who advocates the law that excludes the time spent to obtain copies then the appeal should be lodged automatic and others advocates that even if laws exclude the time spent to obtain the judgment the same is not an automatic remedy.

To buttress his argument he cited the case of **Tanzindia Assurance Company Limited Versus Richard Augustine Zuberi**, Civil Appeal No. 129 of 2019, High Court (unreported) to the effect that, even if the laws exclude the time spent to obtain the requisite documents the same is not automatic remedy. Finally, he reiterated his prayer in chief that this application be granted.

Having scanned the written submissions filed by the parties and the Court records, the issue calling for determination is whether the applicants were right to file the present application or not.

In the first, I wish to states that, it is a well established rule of practice that, in order for the Court to exercise it discretionary power in extending time, good cause for the delay must be shown by the applicant. Also it is settled principle of the law, an applicant applying for extension of

time must satisfy the Court that since becoming aware of the fact that he/she is out of time, he/she acted very expeditiously and that the has been brought in good faith. See the case of **Royal Insurance Tanzania Ltd. vs. Kiwengwa Strand Hotel Ltd.**, Civil Application No. 116 of 2008, Court of Appeal (unreported).

However good cause has not been defined. It is therefore up to the applicant to sufficiently convince the Court that good cause exists. That, this is well emphasized in the case of **Caritas Kigoma vs. Kg Dewsi Ltd. (2003) T.L.R 420 at page 421** where the Court of Appeal of Tanzania held that:

"In an application for extension of time, the question to be considered is whether sufficient cause has been shown by the applicant for the delay in applying to set aside the ex-parte judgment."

Also it is a position of the law that, the grant of extension of time to lodge an appeal which is out of time in this Court from the District Land and Housing Tribunal in exercise of original jurisdiction is governed by the provision of Section 41 (2) of the Act (supra). This subsection provides for time within which a party aggrieved by the decision or order of the District Land and Housing Tribunal may appeal to this Court. It reads:

"An appeal under subsection (1) may be lodge within forty five days after the date of the decision or order:

Provided that, the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

But the cited provision of the law must be read together with Section 19 (2) of the Law of Limitation Act (supra) which provides that:

" (2) In computing the period of limitation prescribe 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 decree or order appealed from or sought to be reviewed, shall be excluded."

Turning to the merits of this application, it is clear from the record that, the trial tribunal's judgment was delivered on 24th day of October, 2019 and the said copies of judgment and decree were certified on 18th day of March, 2020. But the said requisite documents were availed to the applicants on 23rd day of March, 2020 and then on 31st day of March, 2020 the applicants filed the present application before this Court.

Again I am aware of the position that in computing the period of limitation prescribed for an appeal, the time should start to run from the date the copies were certified. See the case of **Samuel Emmanuel Fulgence vs. The Republic**, Criminal Appeal No. 4 of 2018, Court of Appeal of Tanzania (unreported). Unfortunately, the trial tribunal did not notify the applicants for collection of the said requisite documents.

This position is well emphasized by the Court of Appeal of Tanzania in the case of **Tanzania China Friendship Textile Co. Ltd. vs. Charles Kabweza & others**, Civil Application No. 62 of 2015, Court of Appeal of Tanzania at Dar es Salaam (unreported) where the Court stated that:

"The Court had the duty to notifying the applicant that the copy was ready for the collection. Since that was not done, it would be unjust to condemn the applicant for the delay."

On that regard, this Court decide to adopt the position of the law stipulated under Section 19 (2) of the Law of Limitation Act (supra) which provides that, the time requisite for obtaining a copy of the proceedings and judgment for appeal purpose should be excluded.

The same position is restated in the case of **The Director of Public Prosecutions vs. Mawazo Saliboko @ Shagi & 15 others**, Criminal Appeal No. 384 of 2017, Court of Appeal of Tanzania (unreported) where the Court held that:

"We are therefore settled that the time requisite for obtaining a copy of the proceedings and judgment for appeal purpose has been excluded by the law in terms of the proviso to Section 379 (1) (b) of the CPA. The applicant was therefore entitled to file his appeal within 45 days after receipt of the copy of the proceedings and judgment. He need not apply for extension of time to do so."

Even though the cited case is talking about the criminal case, but it was provide the general principle which can be applicable in the civil matter through Section 19 (2) of the Law of Limitation Act (supra).

From the above observation, it is true that, the applicants were still within time to file an appeal before this Court. I hold so because the requisite documents were availed to the applicants on 23rd day of March, 2020 and the present application was filed on 31st day of March, 2020.

Therefore, when computing the period of limitation from the date when the applicants supplied with the requisite documents to the date when the applicants filed the present application is only 17 days elapsed that means the applicants were still within forty five days as provided by the law hence the applicants were not out of time.

Being a current position of the highest Court of this country, I find out that, this application has merits. Further I order the applicants to file intended appeal within forty five days of the delivery of this ruling. No order as to costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

22/10/2020

Date: 22/10/2020

Coram: D. B. Ndunguru, J

1st Applicant:

2nd Applicant:

3rd Applicant: Present

4th Applicant:

For the Applicants: Mr. Emmanuel Clarence

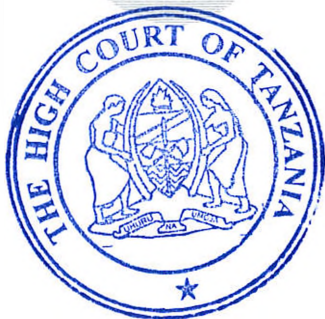
1st Respondent:

2nd Respondent:

For the Respondents: Mr. Twamarenke advocate holding brief of Mr. Mwandu advocate

B/C: M. Mihayo

Court: Ruling delivered in the presence of Mr. Emmanuel Clarence advocate for the applicants and Mr. Twamarenke advocate holding brief of Mr. Mwandu advocate for respondents.




D. B. NDUNGURU
JUDGE
22/10/2020