

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

MISCELLANEOUS LAND APPLICATION NO. 14 OF 2020

(From the District Land and housing Tribunal for Rungwe at Tukuyu in Land Appeal No. 61 of 2016. Originating from Luteba Ward Tribunal in Land Case No. 16 of 2016)

ASWILE K. MWANJELILE.....APPLICANT

VERSUS

KALOTI KILANGA.....RESPONDENT

RULING

Date of Last Order: 05/08/2020
Date of Ruling : 16/10/2020

MONGELLA, J.

This application is brought under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2002, as amended by the Written Laws (Miscellaneous Amendments) (No. 2) Act of 2016, and section 95 of the Civil Procedure Code, Cap 33 R.E. 2019. In the application the applicant is seeking to be granted extension of time within which to lodge an appeal out of time. He is seeking to impugn the decision of the District Land and Housing Tribunal for Rungwe at Tukuyu in Land Appeal No. 61 of 2016. He is represented by Mr. Omary Issa Ndamungu, learned advocate and on the other hand the respondent appeared in person. The application was argued by written submissions.



Mr. Ndamungu first prayed to adopt the applicant's affidavit filed in support of the application. In the applicant's affidavit as well as in the submission by Mr. Ndamungu, the applicant averred that the Tribunal issued its judgment on 15th June 2017. He however, obtained a copy of the judgment in December, but did not state the specific date. He claimed that he is a peasant thus had no financial ability to pay for filing fees of the petition of appeal on time. When he obtained the money for filing fees he was late for three days and his appeal was struck out by this court for being filed out of time.

The applicant also advanced another reason being that he was sick and was attending treatment at Government Hospital which prevented him from raising money in time for the court fees. To prove this assertion he presented medical documents (annexture AM3).

On the other hand, the respondent vehemently opposed the application on the ground that no sufficient reason has been advanced by the applicant. He challenged the argument or reason that the applicant was destitute. He wondered how could a person manage to engage an advocate and at the same time fail to get filing fees at the rate of T.shs. 26,500/-. He as well challenged the medical records presented by the applicant on the ground that they indicate that the appellant attended Mpunguti Dispensary on 30th July 2017 and 3rd August 2017 while the Tribunal Judgment was issued on 19th June 2017 and the appeal that was struck out was presented in this Court on 16th August 2017. He added that there is a contradiction in the submission presented by Mr. Ndamungu on the ground that at one point he states that the applicant was sick and

could not raise the required money for filing fees and at another point he stated the applicant had to engage on peasantry activities to raise money for filing fees. He was of the position that the reasons advanced are not genuine as the applicant could not be sick and at the same time engaging in peasantry activities to raise money for filing fees. On these bases he prayed for the court to dismiss the appeal.

I have considered the arguments by both parties. First I must say that I join hands with the respondent in doubting the claim by the applicant that he had no money for filing fees and was sick. The dates presented do not in any way show that the applicant was really prevented by sickness from obtaining money for filing fees. In addition, lack of finances for court fees has not been entertained as a sufficient reason for delay in instituting a claim in court. Entertaining such a claim shall lead to chaos as parties shall be delaying coming to court on time on the ground of searching for money for filing fees. Besides, if the applicant was really that destitute, he could have sought for legal aid which is plenty in Mbeya region and an application to waive the filing fees would have been filed. It as well surprises me that a party can fail to raise T.shs. 26,500/- for filing and at the same time manage to engage a private advocate on a fee.

However, on the other hand, going through the court record, I still have to consider if at all the applicant had delayed in the first place. The law is settled to the effect that the time one waits for copies of judgment and decree has to be deducted in computing time limitation. This is provided under section 19 of the Law of Limitation Act, Cap 89 R.E. 2019. The position settled under this provision of the law was also underscored by

the Court of Appeal in the case of ***The Director of Public Prosecutions v. Mawazo Saliboko @ Shagi & 15 Others***, Criminal Appeal No. 384 of 2017 (CAT at Tabora, unreported) whereby the Court ruled that the time one waits for issuance of the copies of judgment or proceedings has already been excluded under the law. The CAT in this case was discussing the application of section 379 (1) (b) of the Criminal Procedure Act, which is couched in similar terms as section 19 of the Law of Limitation Act. It follows therefore that the position settled by the CAT in this case overrules the stand that has been taken by this Court, by some of the judges to the effect that a party still has to seek for extension of time where the delay emanates from waiting copies of judgment, decree and proceedings. The settled position, as of now, is thus to the effect that a party need not apply for extension of time on the ground that he/she was waiting for copies of judgment/decree and or proceedings if after exclusion of that time he/she is still within the time limit.

In ***Samuel Emmanuel Fulgence v. The Republic***, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported) the Court went further and ruled that the time should start to run from the date the copies were certified. This means that the time to be considered in determining whether a party is time barred or not is the date when the copies of judgment and decree were ready for collection, being the date the said copies were certified and not the date a party obtained the said copies.

The record indicates that the Tribunal judgment was pronounced on 15th June 2017. The copies of judgment as evidenced by the certification stamp were ready for collection on 19th June 2017. The appeal that was

struck out was filed in this Court on 16 August 2017. This matter as evidenced in the record, emanated from Lutebo Ward Tribunal. Under section 38 (1) of the Land Disputes Courts Act the time limit for filing an appeal is sixty days. Thus counting from 19th June 2017 when the judgment was ready for collection, the sixty days were to elapse on 18th August 2017. The first appeal being filed on 16th August 2017 was thus very much within the time limit of sixty days. Considering the CAT decision in **Samuel Emmanuel Fulgence** (supra) it ought not to have been struck out in the first place.

Given the observation I have made above, I find it just and fair to accord the applicant an opportunity to pursue his appeal. I therefore grant the extension of time as applied for. The applicant is given 21 days from the date of this ruling to lodge his appeal. I make no orders as to costs.

Dated at Mbeya on this 16th day of October 2020.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 16th day of October 2020 in the presence of both parties.




L. M. MONGELLA
JUDGE