**THE UNITED REPUBLIC OF TANZANIA**
**JUDICIARY**

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

**MISCELLANEOUS LAND APPLICATION NO. 45 OF 2020**
*(From the District Land and housing Tribunal for Mbeya at Mbeya in Land Application No. 57 of 2016)*

**HTT INFRANCO LTD.....APPLICANT**

**VERSUS**

**RAHABU SAMLAGA MWAKAFWILA.....1ST RESPONDENT**

**AHAZI ROBERT MWAMPAGAMA.....2ND RESPONDENT**

**MARTIN KALAMBO** (As Administrator of the Estate of the Late SELEMANI KALAMBO MWAMPAGAMA).....**3RD RESPONDENT**

**VODACOM (T) LTD.....4TH RESPONDENT**

**RULING**

Date of Hearing: 01/10/2020
Date of Ruling : 26/11/2020

**MONGELLA, J.**

In this application the applicant is seeking for extension of time within which to file an appeal out of time in this Court. The applicant wishes to appeal against the decision of the District Land and Housing Tribunal (the Tribunal) rendered in Land Application No. 57 of 2016. The application is filed under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 and section 95 of the Civil Procedure Code, Cap 33 R.E. 2019. It is supported by the sworn affidavits of one Michaela Herack Marandu, the

Head of Legal Services of the applicant's company and Kulwa Shilemba, a legal trainee at MM Attorneys.

Both parties were represented whereby the applicant enjoyed legal services of Mr. Leonard Masatu and the respondents enjoyed legal services of Mr. James Kyando, both learned advocates. The application was argued orally.

Referring to paragraphs 5, 6, 7, and 8 of the affidavit sworn by Michaela Herack Marandu, Mr. Masatu adduced two main reasons for the delay. First, he submitted that there was delay in obtaining a copy of the decree. He stated that after the judgment was pronounced on 31st January 2020, they wrote a letter and were only supplied with a copy of the judgment on 05th February 2020. Then they were informed that the decree was not ready.

Thereafter they made a follow up on the copy of the decree whereby as deponed by Kulwa Shilemba under paragraph 3, 4, and 5 of his affidavit, they were still told that the decree was not ready. The said Kulwa Shilemba travelled from Dar es Salaam to Mbeya on 9th May 2020, but was again told that the decree was not ready until 14th May 2020. He thus waited for four days to be availed with a copy of the decree. The same was supplied to him on 14th May 2020. However, when availed with the copy of the decree they noted that it was dated 30th January 2020. He added that the stamp also does not show the date of extraction. Citing the case of ***Fortunatus Masha v. William Shija*** [1997] TLR 41, he argued that

it was important for the Tribunal to stamp the date the decree was issued to them.

Mr. Masatu continued to submit that by the time they received the decree they were already out of time, thus filed the application at hand on 19th May 2020. Counting from 14th May 2020 to 19th May 2020 he said that there was a further delay of five days. However, relying on the case of ***Rosemary Kato Mushumba & Another v. Muhidini Mustafa Hassani & Another***, Misc. Civil Application No. 157 of 2019 he argued that a delay of five days can be tolerated.

The second reason for seeking extension of time concerns illegality in the impugned decision of the Tribunal. Referring to paragraph 11 of the sworn affidavit of Michaela Marandu, Mr. Masatu argued that the illegality concerns the active participation of assessors. He argued that the opinion of assessors was not read over to the parties as required under the law, that is, section 23 (2) of Cap 216 and regulation 19 (2) of G.N. 174 of 2003. To cement his argument he referred the court to the case of ***Selina Adam Kibona v. Absolom Swebe (Sheli)***, Civil Appeal No. 286 of 2017 which also insists on reading of opinion of assessors to the parties before composition of judgment.

On the other hand, the respondent through Mr. Kyando, his advocate, vehemently opposed the application. Countering the reason relating to delay in issuing copies of judgment and decree, Mr. Kyando argued that the applicant only advanced mere stories. He said that the judgment was delivered on 30th January 2020 and not 31st January 2020 as claimed by

Mr. Masatu. He submitted that on this date the copies of judgment and decree were both ready for collection. He challenged the averment by the said Kulwa Shilemba that he was informed that the decree was not ready upon making several follow ups. He contended that such averments ought to have been supported by the affidavit of either the Chairman of the Tribunal or the person who gave him such information to verify the claim. He was of the view that the court ought to be guided by records of the court and not otherwise. He prayed for the court to be guided by the principle settled in the case of ***Alex Ndendya v. The Republic***, Criminal Appeal No. 207 of 2018 (CAT at Iringa, unreported) to the effect that the court record is taken to be authentic.

Regarding the reason on illegality, Mr. Kyando argued that the allegation is not true. He contended that, as seen on record, the applicant closed his evidence on 14th November 2019. The Tribunal then ordered for assessors' opinion to be read on 16th December 2019. The opinions of assessors were read and date of judgment fixed. On these bases he challenged the argument by the applicant arguing that it lacks merit.

Mr. Kyando argued further that there is no diligence on the part of applicant. He challenged the letter dated 29th January 2020 by the applicant in which he appears to have requested for copies of judgment and decree. He contended that the said letter is dated 29th January 2020, a date prior to the date of pronouncement of the judgment, as the judgment was pronounced on 30th January 2020. He added that in the said letter, the applicant stated that he is requesting for copies of judgment and decree for purposes of appealing to the High Court. Mr.

Kyando wondered as to how the applicant could anticipate that he will be defeated in that case.

He argued further that it is not the position of the law that the court must certify the date of collection as claimed by the applicant's counsel. He as well challenged the tickets provided by the applicant arguing that they are not conclusive evidence that the said Kulwa Shilemba travelled specifically to follow up on the copies of judgment and decree. He as well challenged "annexture HTT5" a receipt of payment for the judgment, saying that it is very suspicious as it shows that it was paid for in May while the judgment was delivered in January. He prayed for the court to consider the applicant's documents with caution as they appear not to be genuine.

In rejoinder, Mr. Masatu submitted that he mistakenly stated that the date of judgment was 31st January 2020. He said that the correct date is as stated by Mr. Kyando, being 30th January 2020. He disputed the argument by Mr. Kyando that an affidavit of the person that issued to them the information that the copies of decree were not ready ought to have been presented. On this, he argued that the travel documents and letters requesting to be supplied with the copy of decree should suffice to prove that there was delay in issuing the copy of decree. Regarding the request letter dated 29th January 2020, Mr. Masatu argued that on 29th January 2020 the matter was adjourned to 30th January 2020 thereafter they wrote other reminder letters on 19th February 2020 and 11th May 2020. He as well insisted that the opinion of assessors was not read to the parties.

I have considered the arguments by both counsels. To convince this Court to grant the extension of time sought, the applicant advanced two main reasons. With regard to the first reason, the applicant claims that there was delay in issuance of the copy of decree to enable him file the appeal within time. He presented several letters in which he requested to be availed with the copy of decree (annexture HTT-1, HTT-2, and HTT-3), a receipt for payment of the copy of decree (annexture HTT-5), and bus tickets showing that one Kulwa Steven travelled to and from Mbeya to obtain the copy of decree (annexture KS 1).

Starting with the bus tickets, I first of all agree with Mr. Kyando's argument that the same are not conclusive evidence that the said Kulwa Shilemba travelled for purposes of obtaining the copy of decree. Second, I find the same being so doubtful. This is because, while at paragraph 3 of his affidavit he states that he was personally supplied the copy of decree on 14th May 2020, Annexture KS1 shows that he reported at the bus stand on the same date at 05:30 am hours and departed to Dar es Salaam at 06:00am hours. This connotes that if he was availed the copy of decree on that date, then it must have been before 05:30 hours before he reported to the bus stand, but we all know that government offices do not start services at such hours. I do not doubt that the said Kulwa Shilemba was in Mbeya on the dates claimed, but I believe he was in Mbeya on other businesses best known to him.

The applicant claims that he wrote several letters, as presented in annextures HTT-1, HTT-2 and HTT-3, requesting to be availed with the copy of decree. The record however, shows that the copies of decree were

available for collection on 30th January 2020. This is evidenced by the date and the certification stamp on the decree. The applicant happens to be surprised as he claims that he was informed that the copies were not ready until 14th May 2020. In other words, I can say that the applicant is challenging the court/Tribunal record. As argued by Mr. Kyando, of which I fully subscribe, the law is settled to the effect that records of the court are taken to be authentic and cannot be easily impeached. In the case of ***Alex Ndedya v. Republic*** (supra) the Court of Appeal held at page 12 that:

> *"It is a settled law in this jurisdiction that a court record is always presumed to accurately present what actually transpired in court. This is what is referred to in legal parlance as the sanctity of the court record."*

The Court further quoted in approval its previous decision in ***Halfani Sudi v. Abieza Chichili*** [1998] TLR 527 whereby it again followed its previous decision in ***Shabir F. A. Jessa v. Rajkumar Deogra***, Civil Reference No. 12 of 1994 (unreported) where it held that "***a court record is a serious document; it should not be lightly impeached***." See also: ***Paul Osinya v. R.*** [1959] EA 353, also quoted in approval by the CAT in ***Alex Ndendya*** (supra). In this case it was held that "***there is always a presumption that a court record accurately represents what happened.***"

As I stated earlier, the Tribunal record shows that the copies of judgment and decree were ready for collection on 30th January 2020. If the applicant considers this record to be erroneous, he should have obtained an affidavit of the officer who he claims that informed him that the copies

were not yet ready. In existence of the Tribunal record as presented herein, the letters of request for copies of decree and the receipt for payment of the copy of decree presented by the applicant or his argument that the date of extraction was not recorded on the decree cannot save him in any way. This is because a position has already been settled by the CAT to the effect that the date to be considered in computation of time is the date of certification of the copies of judgment and decree and not the date of collection of the said copies. In the matter at hand, the date of certification is 30th January 2020. See: ***Samuel Emmanuel Fulgence v. The Republic***, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported). Under the circumstances, this reason is rejected accordingly.

The second reason advanced by the applicant was based on illegality of the impugned decision on the ground that the opinion of assessors was not read to the parties. The court could not resolve on this without perusing the court record as well. Since the applicant never attached any proceedings of the trial Tribunal, I took trouble to call for the original record of the Tribunal whereby I was supplied by the hand written record. My perusal of the record revealed that on 14th November 2019, the Hon. Chairman ordered that the opinion of assessors be read and explained to the parties on 16th December 2019. On 16th December 2019 the record shows that the opinion of assessors was read/availed to the parties, whereby they appeared without their advocates and the judgment was set to be pronounced on 29th January 2020. On 29th January 2020 the Hon. Chairman made an order that the judgment shall be pronounced on 30th January 2020 and it was indeed pronounced on this date. Therefore, as

far as the record of the Tribunal stands, the opinions of assessors were read/availed to the parties on 16th December 2010. The law is silent as to who exactly is to read the opinion. In this case the record shows that it was the Tribunal Chairman who read it out to the parties. The applicant's allegation is therefore unfounded.

As much as it is in the discretion of the court to grant extension of time, the same cannot be granted in the absence of sufficient reasons. The court has to decide judiciously taking into consideration sufficient reasons advanced by the applicant. See: ***Benedict Mumello v. Bank of Tanzania***, Civil Appeal No. 12 of 2002 (unreported) and ***Jaluma General Supplies Limited v. Stanbic Bank Limited***, Civil Application No. 48 of 2014 (unreported). In consideration of what I have discussed hereinabove, I find no sufficient reason advanced by the applicant to move this Court to grant the extension of time prayed for. In the circumstances, I dismiss the application for lack of merit, with costs.

Dated at Mbeya on this 26th day of November 2020.

**L. M. MONGELLA**

**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 26th day of November 2020 in the presence of the 1st and 3rd respondents and Mr. James Kyando and Mr. Hilary Ismail, learned counsels for the 1st and 4th respondents, respectively.

THE HIGH COURT OF TANZANIA

**L. M. MONGELLA**

**JUDGE**