

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. LAND APPLICATION NO.47 OF 2019

(Originating from Mwika Kusini Ward Tribunal Case No.7 of
201, C/F Appeal No.62 of 2018 District Land and Housing
Tribunal at Moshi)

KATARINA JAMES MTIYA.....1ST APPLICANT

JACKLINE JAMES MTIYA.....2ND APPLICANT

VERSUS

DAVID JAMES MTIYA.....RESPONDENT

RULING

MUTUNGI .J.

The applicants, Katarina James Mtiya and Jackline James Mtiya seek for extension of time to file their appeal out of time under Order XLIII Rule 2 of the Civil Procedure code Cap.33 [R.E.2002] and Section 14(1) of the Law of Limitation Act Cap.89 [R.E.2002]. The application is supported by the Applicants' joint affidavit which they prayed be adopted to

form part of their submission. The respondent contested the application by filing a counter affidavit.

Before this court the Applicants appeared in person whereas the Respondent was fully represented by the Erasto Kimani Learned Advocate. In consensus the parties agreed this application be disposed by way of Written Submission.

Arguing their application, the Applicants contended that, on 23/5/2019, the Land and Housing Tribunal of Moshi delivered its judgment in Appeal No. 62 of 2018, in favour of the respondent. Aggrieved by the decision, the applicants intended to appeal. Their initial step was to write to the Tribunal requesting for copies of judgment and proceedings through their letter dated 28/5/2019. Frequent follow-ups did not yield any positive outcome until on 27/5/2019 when they were availed with the copy of judgment only and the rest of the documents are yet to be supplied to them. By the time they were ready to lodge their appeal, time had elapsed.

They were thus compelled to preface lodging their appeal with this application for extension of time, contending that, they have good reasons. One of them being that immediately after the decision they wrote a letter

requesting for copies of judgment and proceedings for appeal purposes. Only that the trial Tribunal failed to avail them with the necessary documents timely.

The second reason was that of illegality concerning Misc. Application No.182/2017 and Misc. Application No.183/2017 which were all instituted by the Respondent but have never been determined by the Trial Tribunal and instead the Respondent lodged Civil Appeal No.62/2018. Supporting their submission the applicants cited the case of **The Principle Secretary Ministry of Defence and National Service v. DP Valambia (1992) T.LR**, where the court allowed the application on the ground of illegality.

Concluding their submission the applicants argued that, the delay was occasioned by the late supply of the copies of judgment, decree and proceedings and was not intentional.

Responding to the applicants' submission, the respondent's Counsel contended that, the applicants didn't establish a good cause for their delay as provided for under **Section 38(1) of the Land Disputes Court Act, Cap 216 R.E. 2019** also amplified in the case of **Lyamuya Construction Company**

**Ltd v. Board of Registered Trustee of Young Women's
Christian Association of Tanzania Civil Appeal No.2 of 2010
(Unreported).**

The Respondent's Counsel blamed the applicants as being negligent in delaying to file their anticipated appeal within the required time. To this he averred, they had failed to account on each day of delay from the date when the judgment was delivered up to the date they filed this application. Stressing on his point, Mr. Kamani maintained that the applicants failed to prove to this Court as to why they are seeking for leave to file their appeal out of the prescribed time.

The Counsel for the Respondent further argued that, the applicants' failure to obtain the copies of judgment and proceedings was due to their negligence, sloppiness and lack of due diligence. They were to be dully informed that copies of judgment and proceedings are not necessary documents to be attached to the grounds of appeal, instead they were required to apply for a decree which they did not.

Concerning the issue of illegality, the Respondent's Counsel

submitted that, it is not true that Misc. application No.182/2017 and No. 183/2017 were not determined as the records shows that both applications were heard and decided whereby execution was stayed and an application for leave to appeal against Land Case No. 62/2016 was granted. This goes to show that the Appellants' were not following up the case that is why they are not aware these applications had been finalized.

Apart from that, it was Mr. Kamani's observations that, even if the said applications were not finalized, still this was not a good reason for extension of time since what the Applicants intend to appeal against is not the said applications but instead it is Civil Appeal No. 62/2018.

The foregoing notwithstanding, it was his further submission that, while passing through the Applicants' submission he noticed that, their application has been made under wrong provision of law. This being an application for extension of time to appeal against the decision of the District land and Housing Tribunal in exercise of its appellate jurisdiction, it was supposed to be made under Section 38 (1) of the Land

Disputes Courts Act, 2002, not under the Law of Limitation Act and the Civil Procedure Code.

The Counsel for the Respondent therefore contended that citing a wrong enabling provision renders this application incompetent. Consequently this court has not been moved to grant extension of time to the applicants. He thus prayed the application should be dismissed and the costs be provided for.

In their rejoinder the applicants reiterated what was submitted earlier. Addressing the issue of wrong citation, they argued that, since the application involves the issue of time limit, it was proper for them to invoke the Law of Limitation Act as an enabling provision. The Applicants therefore prayed their application be allowed.

I have given due consideration to the submissions by both parties. The reasons upon which this application is grounded on are: **one** that, after the judgment in Land Appeal No. 62 of 2018 was delivered on 23/5/2018, on 28/5/2018 the applicants filed a letter requesting for copies of judgment and proceedings for appeal purposes. **Two**, that, they made serious follow-ups with the tribunal until 27/8/2018

when they were only supplied with the judgment while the decree and proceedings were yet to be supplied. **Three**, that after securing the copies time had already lapsed, thus this application was necessary.

In determining the merits of this application, the issue is whether the above account has demonstrated sufficient reasons. It is without much say that the applicants have not been able to demonstrate sufficient reasons as illustrated under **section 38 (1) of the Land Disputes Court Act, Cap 216 R.E. 2019** which states: -

“Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or provisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court Land Division.

*Provided that the High Court (Land Division) **may for good and sufficient cause** extent the time for filing an appeal either before or after such period of sixty days has expired.”*
[Emphasis mine]

In the case of **R v. Yona Kaponda & 9 others [T. L. R] 84, the Court of Appeal** illustrated two things where it held:

"In deciding whether or not to allow an application to appeal out of time, the court has to consider whether or not there is 'sufficient reasons' not only for the delay, but also 'sufficient reasons' for extending the time during which to entertain the appeal."

Although so far there is no exact definition of what amounts to "sufficient reasons" or "cause", but in **Lyamuya Construction case (supra) the Court of Appeal** spelt out factors or rather indicators which can assist in arriving at the conclusion as to whether the applicant has advanced sufficient reasons or not, warranting the grant of the application before it. Those pointers are: (i) the delay should not be inordinate; (ii) there must be account of each delayed day; (iii) diligence, and not apathy, negligence or sloppiness in the prosecution of the action the applicant intends to take; and (iv) existence of point of law of sufficient importance, such as illegality of the decision challenged. Any of the pointed out criteria can attract the

court to examine the application in favour of the applicants.

Turning now to the matter at hand, the decision in Land Appeal No. 62 of 2018 was delivered on 23/5/2019. The applicants started making a follow on 28/5/2019 which is five days after the pronouncement of judgment against the decision. After being supplied with the alleged copy of judgment on 27/8/2019 the appellants spent more than three months before filing this application and they didn't account for these days in their submission.

Regarding the issue of illegality, it is clear from the outset that the said illegality emanates from the applications which were not contested by the applicants. It is obvious that the applicants misdirected themselves and I thus find the reason unmeritorious.

There is yet another glaring feature in this application which relates to the enabling provision. As properly pointed out by the Respondent's counsel, the same having its genesis from the District Land and Housing Tribunal at Moshi exercising its Appellate jurisdiction, the law of Limitation Act and the Civil Procedure Code (Supra) are irrelevant. The proper enabling

provision in the given circumstances is Section 38 (1) of the Land Disputes Court Act (Supra) as already cited earlier in the Ruling. It suffices to state that there is wrong citation of law which renders the application incompetent.

In conclusion, I find this application devoid of merits, and is accordingly dismissed with costs.

It is so ordered.



B. R. MUTUNGI

JUDGE

8/7/2020

Ruling read this day of 8/7/2020 in presence of the Respondent and in absence of the Applicants dully notified.



B. R. MUTUNGI

JUDGE

8/7/2020

RIGHT OF APPEAL EXPLAINED.