

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TANGA DISTRICT REGISTRY**

**(LAND DIVISION)**

**AT TANGA**

**MISC. LAND CASE APPLICATION NO. 15 OF 2020**

**(Originating from Decision of Land Appeal No. 37 of 2017 of District Land and Housing Tribunal for Korogwe at Korogwe of 25<sup>th</sup> October, 2017 before Hon. M.R. MAKOMBE – CHAIRMAN)**

**PETRO YOHANA MBUGUNI..... APPLICANT**

**VERSUS**

**FANUEL MKAGULU.....RESPONDENTS**

**RULING**

**Mruma, J.**

This is a ruling on application for extension of time within which the Applicant Petro Yohana Mbuguni can an appeal to this court out of time.

This application is brought under section 38 (1) of the Land Disputes Courts Act and as is required by law, it is supported by the Applicant's affidavit.

The brief facts of the case are that; the Applicant was the Applicant in Land Case No. 54 of 2016 of the Vugiri Ward Tribunal which delivered its judgment in his favour. The Respondent was the present Respondent Fanuel Mkagulu.

Fanuel Mkagulu was aggrieved by the decision of Vugiri Ward Tribunal and he successfully appealed to the Korogwe District Land and Housing Tribunal in Land Appeal No. 37 of 2017. Judgment of Korogwe District Land and Housing Tribunal was delivered on 25/10/2017.

It is the Applicant's contention that he was dissatisfied by the said judgment of the District appellate tribunal and that on the same day he wrote a letter requesting to be supplied with copies of proceedings and the judgment for appeal purposes but the same were not availed to him till 23/01/2020. By the time he was supplied with copies of proceedings and judgment the prescribed time of appeal had already expired and hence this application. He prays for extension of time within which he can lodge his appeal to this court on the ground that he was delayed by the District Tribunal which failed to supply him with copies of proceedings and judgment in time to enable him to lodge this appeal in time.

The Application is vigorously opposed by the Respondent Fanuel Mkagulu who contended that the application was an afterthought which was intended to obstruct execution order which however, was carried out on 06/01/2020 by evicting the Applicant from the suit land.

Section 38 (1) of the Land Disputer Court Act [Cap 216 R.E. 2019] under which the application is pegged provides that;

*'Any party who is aggrieved by decision or order of the District Land and Housing Tribunal in exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order appeal to the High Court. Provided that the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.'*

As stated herein before, Judgment of the District Land and Housing Tribunal was delivered on 25/10/2017 and the present application was presented for filing on 18<sup>th</sup> March, 2020, which is about 875 days or 2.3 years after the date of the decision of the District Tribunal. The main issue for determination is whether the Applicant has shown good cause to justify the granting of extension. It should be noted that the length of the duration of the delay in bringing an application for extension may be immaterial if there are good and justifiable reasons.



Generally, delay caused by failure to obtain copies of proceedings and judgment of a lower court the decision of which is sought to be challenged constitutes good cause. However a party who seeks to rely on that ground must satisfy the court that:

- (i) He applied for copies of judgment and proceedings from which he seeks to appeal in time.
- (ii) He made follow-ups with the Registry of the lower court whether physically or through phone calls or any other electronic means.
- (iii) He collected copies of judgment and proceedings he had applied for immediately after they were certified and therefore ready for collection and that;
- (iv) Immediately after he obtained them, he lodged an application for extension.

On top of justifying his grounds of delay, the Applicant must also satisfy the court as to why he did not use the option of applying for extension of time before the expiry of the prescribed period which option is available under the Law.

Because the law allows such application to be filed before the expiry of sixty (60) days prescribed by the law, and on seeing that time was running out and he had not received copies of proceedings and judgment, the Applicant ought to have lodged his application for extension of time. In the present case he did not use that option and no explanation has been given as to why he didn't use such option.


Regarding the allegations that he was not supplied with copies of proceedings and judgment in time, the Applicant has to satisfy the court that he made some efforts to get them in time but in vain. Attaching a copy of an application letter alone does not prove that he followed up. A serious applicant would have obtained at least an affidavit from the registry officer or clerk or a certificate of delay from the court proving that there was a delay in supplying such copies caused by the court itself. This is important because the lower tribunal or court is not given a chance of defending itself against the accusation leveled against it.

In the instant case, apart from the letter requesting for copies of proceedings and judgment, a letter which does not have the telephone number or physical address of the Applicant to whom those copies would be sent, there is no indication that he made any other following after the

letter. The allegations that he was delayed to lodge his appeal by the tribunal have therefore not been substantiated.

That said, this application is dismissed for want of substantiated good and sufficient cause to warrant extension of time. The Respondent will have his costs.



  
A.R. MRUMA  
**JUDGE**  
06/11/2020