

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. LAND APPLICATION NO. 15 OF 2019

(C/f application no. 165 of 2015 of Moshi District and housing tribunal)

LUDOVICK LAKINDI KWAY.....APPLICANT

VERSUS

FELICIANA MALLYA.....RESPONDENT

RULING OF THE COURT

Last Order:2/3/2020

Date of Ruling:2/3/2020

MWENEMPAZI, J.

The applicant filed this application under section 41(2) of the Land Disputes Act, Cap. 216 R.E.2002 seeking an Order of the Court enlarging time to file an appeal out of time against the Judgement and Decree in Application No. 165 of 2015 of the District Land and Housing Tribunal of Moshi District delivered on 14th day of November, 2018(Hon. Sillas Chairman). The application is supported by an affidavit shown by Ludovicky Lakindi Kway.

In the affidavit, the applicant has averred that immediately after the Judgement he was aggrieved, he thus filed a letter applying for the judgement and decree and proceedings of the trial tribunal so that he may file an appeal. He was then supplied with the documents, judgement and decree on the 12th February, 2019 and continued to make follow up of the proceedings which he was supplied on the 11th March, 2019. At the time, time to appeal had already lapsed hence the need to apply for an order for extension of time before filing an appeal. All the averments are in the affidavit accompanying the application.

Parties were represented, and the applicant was represented by Mr. Mussa Mziray, learned Advocate, and the Respondent is being represented by Mr. Faustine Materu. At the hearing the counsel for the applicant reiterated the contents of the affidavit. In order to reinforce his arguments the counsel cited the case of the **Garnad Alliance Limited Versus Mr. Wilfred Lucas Tarimo and four others**, Civil Application no. 84/2016 of 2018, Court of Appeal of Tanzania at Dar es salaam(unreported) whereby F. A. Levira J.A allowed an application for extension of time due to delay in supply of a copy of Judgement. He thus prayed for this court to adopt the position and allow the application.

The respondent had objected to the application by filing counter affidavit. The main argument was that the applicant has stated that he wrote a letter but did not attach the same to the affidavit. In the affidavit in reply to the counter affidavit the applicant in paragraph 3 stated that it was not intended not to attach, the applicant accidentally forgot to attach the same. Thus, at the hearing, the counsel for the respondent stated that since the

applicant has produced a letter applying for the copies of Judgement, decree and proceedings and there is proof that even the said documents were obtained late. We have an opinion that there is no any reason to object the application for extension of time

I thus ruled immediately that the extension is granted and the applicant is given 30 days from today to file an appeal. However, I did not state as to cost. I would thus order that each party is to bear his own cost.

it is ordered accordingly.



T. M. Mwenempazi
T. M. MWENEMPAZI
JUDGE
2/3/2020