

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

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

**MISC. LAND APPLICATION NO. 108 OF 2020**

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land  
Application No. 53 of 2018)

**LETELIMBE TEMBELA.....APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF  
CHAMA CHA MAPINDUNZI.....RESPONDENT**

**RULING**

Date of Last Order: 19/08/2021  
Date of Ruling : 08/10/2021

**MONGELLA, J.**

The applicant is seeking for extension of time within which to lodge an appeal against the decision of the District Land and Housing Tribunal for Mbeya at Mbeya (the Tribunal) rendered in Land Application No. 53 of 2018. The application is brought under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019.

Both parties enjoyed legal representation whereby the applicant was represented by Ms. Jenifa Joely Silomba and the respondent was



represented by Ms. Caroline Joseph Mseja, both learned advocates. The application was argued by written submissions.

The applicant advanced one major reason for the delay being that the Land Tribunal delayed in issuing copies of judgment and decree which are mandatory documents in lodging the appeal. In the submission by Ms. Silomba, it was stated that the Tribunal judgement was pronounced on 21<sup>st</sup> July 2020. On 23<sup>rd</sup> July 2020 the applicant wrote a letter requesting to be availed with copies thereof but the same were supplied to the applicant sometime in June 2021 whereby the time had already elapsed.

Ms. Silomba contended that the delay was not intentional on the applicant's part. She appeared to be aware of the fact that the applicant had automatic right of appeal where copies of judgment and decree are delayed to be issued however, she contended that the applicant was as well waiting to be supplied with copies of proceedings which have not been supplied to date. She had a stance that the reason advanced by the applicant is sufficient to move this court to grant the extension of time. She supported her argument with a decision from this Court in the case of **Baltazary Kinasha v. Paula Bernad Nindi**, Misc. Land Case Application No. 201 of 2019 (HC at DSM, unreported).

On her part, Ms. Mseja opposed the application on the ground that no reasonable ground for the delay has been advanced by the applicant. She argued that the applicant was obliged to account for each day of the delay and has failed to do so. Further, referring to Order XX Rule 20 of the Civil Procedure Code, Cap 33 R.E. 2019 she argued that the applicant

ought to have applied to be supplied with the copies of judgment and decree and should have attached the copy of the letter to support his claim.

She had a stance that the applicant had no interest in pursuing the appeal until when he found the respondent in the land in dispute. She was of the view that, if the copies were really delayed to be issued, the applicant should have applied for extension of time before the expiry of the time limit of 45 days.

I have given the arguments by both counsels due consideration. Extension of time can only be granted by the court upon the applicant furnishing sufficient reasons for the delay. See: **Barclays Bank Tanzania Limited v. Tanzania Pharmaceutical Industries & 3 Others**, Civil Application No. 62/16 of 2018 (CAT at DSM, unreported); and **Alliance Insurance Corporation Limited v. Arusha Art Limited**, Civil Application No. 33 of 2015 (unreported).

In his affidavit as well as in the submission of his advocate, Ms. Silomba, the applicant has raised one major reason, being that the copies of judgment and decree were delayed to be issued. **Order XXXIX Rule 1 (1) of the Civil Procedure Code**, requires an appeal to be accompanied by copies of judgment and decree appealed against. See also: **MIC Tanzania Limited v. Hamisi Mwinyijuma & 2 Others**, Civil Appeal No. 64 of 2016 (HC at DSM, unreported).

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 is clear that Ms. Mseja never disputed that the copies of judgment and decree were issued at a later date. She only argued that the applicant ought to have attached a copy of the letter requesting for the certified copies of the judgment and decree. I wonder why Ms. Mseja advanced this argument because it is apparent on the court file that the said letter was attached to the applicant's application.

The record further indicates that the judgment was pronounced on 21<sup>st</sup> July 2020. The copy of judgment was certified on 24<sup>th</sup> September 2020 and the copy of decree was certified on 30<sup>th</sup> September 2020. In ***Samuel Emmanuel Fulgence v. The Republic***, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported) the CAT ruled that the time should start to run from the date the copies were certified. This means that the time of reckoning is the date when the copies of judgment and decree were ready for collection, being the date the said copies were certified.



Since the law requires copies of judgment and decree to accompany the memorandum of appeal, then I am of the opinion that the time started to run on 30<sup>th</sup> September 2020 when the copy of decree was certified. In the premises the applicant ought to have filed his appeal by 15<sup>th</sup> November 2020. However, instead of filing the appeal he filed the application at hand seeking for extension of time. By doing that the applicant technically delayed himself further.

In consideration of the fact that the applicant never slept on his right to appeal, but invoked wrong procedure by seeking for extension of time after obtaining the certified copies of judgment and decree, I grant his application. The applicant should file the intended appeal in this court within 21 days from the date of this Ruling. No orders as to costs.

Dated at Mbeya on this 08<sup>th</sup> day of October 2021.

  
**L. M. MONGELLA**

**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 08<sup>th</sup> day of October 2021 in the presence of the applicant and Mr. Peter Kiranga, learned advocate, holding brief for Ms. Caroline Mseja, Advocate for the respondent.



  
**L. M. MONGELLA**

**JUDGE**