IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 131 OF 2019

(Arising from Judgment of the district Land and housing Tribunal for Mwanza at Mwanza Application No. 436 of 2016 dated 28/1/2019)

MARKARASH MAKWAYA SHABANI ....APPLICANT

VERSUS

NYANZA CO – OPERATIVE UNION (1984) LTD ....RESPONDENT

RULING

04/ & 06.05.2020

RUMANYIKA, J.:

The application for extension of time within which, with respect to judgment and decree of 28/1/2019 of the District Land and Housing Tribunal for Mwanza (the DLHT) Markarash Makwaya Shabani (the applicant) to lodge appeal is brought under Section 41 (2) of the Land Disputes Courts Act Cap 216 RE. 2002 (the Act). It is supported by affidavit of the applicant whose contents he adopted during the hearing.

When before my brother Tiganga, J the application was called on 2/4/2020 for hearing, but due to the global outbreak of the Coronavirus Pandemic of which preventive measures among others discouraged court rooms/ chambers to be crowded, parties were ordered to argue the application by way of written submissions. According to records they

complied with the scheduling order. The applicant filed his submissions on 16/4/2020 and the respondent filed his on 22/4/2020. It appears there was no rejoinder preferred and filed. 22/5/2020 was set date of the ruling.

Just as along with this application it transpired that there was between the same parties on the same subject matter, but the other one for stay of execution of the impugned judgment and decree (Miscellaneous Land Application No 181 of 2019) pursuant to his order of 4/5/2020 for convenience purposes his lordship advised that the twin applications be determined by one and the same judicial mind. It is for that reason that the present application was the same 04.04.020 re – assigned to me.

In a nutshell the applicant submitted that as he was not satisfied with the judgment and decree of 28/1/2019, he lodged his notice of appeal and in writing applied for copies on 7/3/2019 (copy of the letter appended – Annexture "A"), he was not supplied copies until as late as 24/6/2019 hence the instant application. I had never been negligent but for the late supply of the copies of the impugned judgment and decree. The applicant further contended. That is it.

With regard to their written submissions according records drawn and filed on 2/4/2020 by Jenipher Donald Kahema advocate, in a nutshell the respondents submitted that now that also in his presence the impugned judgment and decree were delivered on 28/1/2019 and there was no reasons assigned for the applicant to apply for copies not before 7/3/2019 but 39 days later, pursuant to Section 42 (1) of the Act the applicant should have appealed within 45 days of the impugned judgment contrary

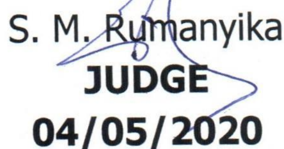
to the rule in the case of **Interchick Company Limited V. Mwaitenda Ahobokile Michael**, Civil Application No 218 of 2016 (CA) at Dar – es Salaam unreported Case of **Dar es Salaam City Council V. Jayantilal P. Rajani,** Civil Application No 27 of 1987 (CA) unreported cited with approval, the applicant did not act diligently and promptly. The respondents submitted. That is all.

The pivotal issue and it is trite law is whether the applicant has assigned any sufficient ground for extension of time. The answer is no. Reasons are:- **(1)** Although he, within time applied for the copies say 1 6/30 months later, according to records the judgment was certified and therefore ready for collection on or by 10/6/2019. But he collected it on 24/6/2019 i.e fourteen (14) days later. He did not in the supporting affidavit or in his submissions say that during follow ups he was always asked to hold on. The applicant therefore he did not give account for each day of the 14 days delay. **(2)** The applicant even raised no point of illegality which sufficiently may constitute a sufficient ground for extension of time. **(3)** Without running risks of jumping onto merits of the intended appeal; **(i)** I found in it no good chances of success. Leave alone chances as there is no doubts that the Applicant and Respondents had a tenant and landlord relationship whose terms any one of them may have breached hence institution of Original Applicant no. 436 of 2016 **(ii)** the respondents may have arbitrarily the increased the rent and or prematurely terminated the tenancy agreement which the applicant was not happy with so much so that as it stood, giving vacant possession he was bound to suffer loss fine! But applicant should have vacated or raise

counter claims looking. Looking at the evidence and judgment there was nothing even to suggest applicant's counter claims (**4**) now that for some reasons the parties' relationship had become sour, unless the applicant forcefully occupied the disputed premises, no way the respondents would have accepted him any longer friendly.

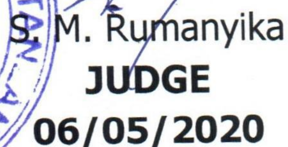
The application intends to serve delaying tactics it is indisguise abuse of the court process. I would not be surprised if for all this years the applicant had not paid the disputed or undisputed rent whichever the lesser. It is very unfortunate that the application was admitted. The devoid of merits application is dismissed with costs. It is ordered accordingly.

Right of appeal explained.



S. M. Rumanyika
JUDGE
04/05/2020

It is delivered under my hand and seal of the court in chambers in absence of the parties this 06/05/2020.



S. M. Rumanyika
JUDGE
06/05/2020