

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 194 OF 2021**

*(Arising from District Land and Housing tribunal of Kinondoni at Mwananyamala Land Application No. 329/2016 delivered on 4/09/2020 by Hon. Mbilinyi Chairperson)*

**ATHUMAN IBRAHIM.....APPELLANT**

**VERSUS**

**SARA ALLOIS..... RESPONDENT**

**R U L I N G**

*Date of last order: 4/11/2021*

*Date of Ruling: 19/11/2021*

**MGONYA, J.**

The Applicant herein been aggrieved by the decision of the District Land and Housing Tribunal for Kinondoni; seeking for an extension of time to file an appeal out of time against the said decision **in Land Application No. 329 of 2016**, delivered on the **4<sup>th</sup> September, 2020**. The application is supported by an

Affidavit duly affirmed by the Applicant herein, **ATHUMANI IBRAHIM**. The same encountered serious objection from the Respondent through her counter affidavit.

This Court ordered the parties to argue the Application by way of written submissions. The said Order was adhered to, hence this Ruling.

In the cause of defending his Application, the Applicant submitted that, soon after the said decision was delivered at the trial court on **4<sup>th</sup> September 2020**, through his Counsel on **7<sup>th</sup> September, 2020** lodged a letter requesting to be supplied with certified copies of Judgment and Decree. Further that, the applicant made physical follow-up at the Tribunal. However, he was not supplied with the copies within time until on **21<sup>st</sup> October 2021** when informed that copies of certified Judgement and Decree are ready for collection at the Tribunal. However, by then, time to appeal had already lapsed. In support of his assertion, the Applicant annexed a letter dated 7<sup>th</sup> September 2020 from LK Associates Advocates.

The Applicant further averred that, after the collection of judgement and decree, applicant looked for another advocate while the previous one Mr. Alfonse Katemi Counsel was not around. The Applicant filed an application to this Court for

extension of time to appeal out of time, in the **Misc Land Application No. 46 of 2020 before Honorable Ebrahim, J.** However, the Application was struck out for some legal anomalies. The Applicant requested order of the Court on **31<sup>st</sup> March 2021** but the same was ready for collection on the **16<sup>th</sup> of April 2021**. After receiving the Order in that respect, the Applicant then prepared and filed the instant application before this Court on the **27<sup>th</sup> of April 2021**.

The applicant submitted that, the delay to file the appeal was not due to the applicant's own fault or negligence but was caused by the fact that copy of ruling and order were not ready for collection within time whereas those documents are necessary for appeal purposes.

On the other side, the Respondent in the counter affidavit and her respective submission in reply to the Application strongly opposed the application, insisting that, the Applicant's application for extension of time to file an appeal out of time is without sufficient cause.

The Respondent conceded that the application for extension of time to appeal is entirely in the discretion of the court to grant or refuse upon the appropriately established cause of delay. The Respondent referred the Court to the case of **TANGA CEMENT**

***COMPANY VS JUMANNE D. MASANGWA AND ANOTHER, CIVIL APPLICATION NO.6 OF 2001, COURT OF APPEAL OF TANZANIA.*** In this case, the Court of Appeal considered several factors including whether the application was brought promptly, absence of any valid explanation for the delay and lack of diligence on the part of the applicant.

Concluding her submission, the Respondent prayed this court to dismiss the Application for being meritless.

After going through parties' respective submissions from as well as the pleadings hereto, the main point of determination is **whether the Applicant has sufficient reasons for the court to grant the sought extension.** It is undoubted that the trial court delivered its decision **on 4<sup>th</sup> September 2020. On 31<sup>st</sup> March 2021** this Court struck out the application for want of proper party to the application. The same Applicant wrote a letter requesting to be supplied with the copies of the order. The copy was availed on **16<sup>th</sup> April, 2021** and **on 27<sup>th</sup> April 2020** the applicant filed this application.

In my opinion, the sequences of events from the date when the disputed decision was delivered by the trial court to the time when struck out by the Court, to the date of instituting the instant application, shows that the Applicant was not idle. This is

clearly indicating that, the Applicant was vital and active in pursuing its right of appeal against the said decision. All the time Applicant acted within a time to request the court documents for his necessary follow up.

The word "**sufficient cause**" is relative one, the same was observed in the case of **OSWARD MASATU MWIZARABU VS TANZANIA FISH PROCESSORS LTD, Civil Application No. 13 OF 2010 (Unreported)** where the Court of Appeal held that:-

***"The term good cause is relative one and is depend upon the circumstance of each individual case. It is upon the party seeking extension of time to provides the relevant material in order to move the court to exercise its discretion"***

This court is thus satisfied that the Applicant has demonstrated sufficient reasons to warrant the grant of the extension sought as per the condition envisaged in **sections 41 (2) of the Land Disputes Act, Cap. 216 [R.E 2019]**. From the above stated reasons, **I hereby allow this application.** The Applicant is hereby availed with **14 days'** time to the date of receiving copy of this Ruling to file his appeal.

It is so ordered.

I make no order as to costs.



**L. E. MGONYA**

**JUDGE**

**19/11/2021**

**Court:** Ruling delivered in the presence of both parties in persons, and Mr. Richard RMA.



**L. E. MGONYA**

**JUDGE**

**19/11/2021**