THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA
MISC. LAND APPLICATION NO. 44 OF 2020.
(From Application No. 127 of 2017, in the District Land and Housing Tribunal of Mbeya, at Mbeya).

DYANA MWANANGWA.....PLAINTIFF

VERSUS

1. **MANDELA SAMSON.....1st DEFENDANT**
2. **SAMSON NDEGE ULAYA.....2ND DEFENDANT**
3. **SIMON MALE.....3RD DEFENDANT**

RULING

25/11/2020 & 18/02/2021.
UTAMWA, J:

This is a ruling on an application for extension of time. The applicant, DYANA MWANANGWA in this application moved this court for the extension of time to file an appeal out of time against a judgement (impugned judgment) of the District Land and Housing Tribunal of Mbeya, at Mbeya (the DLHT) in application No. 127 of 2017. The applicant also prayed for any other order this court may deem fit to grant. The application was preferred under section 41(2) of the Land Disputes Courts Act, Cap. 216 R. E. 2002 (Now R. E. 2019) as amended by Act No. 2 of 2016. It was supported by an affidavit sworn by the applicant herself. According to the record, all the respondents, MANDELA SAMSON, SAMSON NDEGE ULAYA and SIMON MALE (first, second and third respondent respectively) objected the application through a joint counter affidavit jointly signed by them.

The application was argued by way of written submissions. The applicant was represented by Ms. Martha Gwalema, learned advocate. The respondents represented themselves.

The affidavit supporting the application essentially stated that, the applicant was an applicant before the DLHT. She lost the case through the impugned judgment dated the 11th March, 2020. She was aggrieved by it. On 12th March, 2020 she wrote a letter seeking for a copy of the impugned judgement so that she could file an appeal against it. She received the copy thereof (the copy) on the 5th May, 2020 when it was already late. She was thus, advised by her counsel to make the present application for extension of time to file the appeal out of time. She also believes that, the intended appeal has overwhelming chances of success. The interests of just thus, requires the application to be granted.

In her written submissions, the learned counsel for the applicant began with an attack to the respondents' counter affidavit. She argued that, the same indicated that, all the three respondents had jointly signed it. However, the third respondent did not sign the counter affidavit since he had been excluded from the proceedings of the DLHT following his own admission to the applicant's claim. The counter affidavit was thus, defective, she contended.

In her further submissions, the learned counsel for the applicant adopted the contents of the affidavit supporting the application. She also contended that, section 41(2) of Cap. 216 requires appeals of this nature to be filed before this court within 45 days from the date of the decision to

be appealed against. The applicant collected the copy on 5th May, 2020 being only a single day after it had been made available. She then lodged the present application on the 15th May, 2020 being only ten days from the date she had received the copy. This was after she had managed to get an advocated who drafted and filed the present application for her.

The applicant's counsel also contended that, conditions to be considered in granting an application for extension of time are as follows: the length of delay, reason for delay, the degree of prejudice to the other party if granted, and the chance of success if the application is granted. She supported this particular contention by the decision of the Court of Appeal of Tanzania (the CAT) in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Reference No. 8 of 2016, CAT at Dar es Salaam** (unreported). She added that, the reasons for delay in the matter at hand was thus, caused by DLHT as shown above.

In the counter affidavit the respondents disputed the fact that the applicant had applied for the copy and received it on the 5th May, 2020. The applicant could have applied for extension of time even before the expiry of the 45 days. She did not also account for each day of the delay. They further contested the fact that the intended appeal has overwhelming chances of success. They thus, stated that, the applicant did not adduce sufficient grounds for granting the prayed extension of time.

In their replying submissions, the respondents did not address themselves to the challenge against their counter affidavit. They only argued that, the applicant did not adduce sufficient reasons because; she

did not attach to her affidavit the copy of the letter allegedly written by her requesting the copy of the judgement. She did not also attach the copy of the judgment at issue to support her claims. The applicant did not further account for each date of the delay between the days when she received the copy of judgment and when she filed the present application. This was the period of 10 days. The copy was printed earlier before, in April, 2020.

In her rejoinder submissions, the learned counsel for the applicant reiterated her submissions in chief. She further argued that, the application letter for the copy of judgement was attached to the affidavit. Again, the copy of the judgment in record do not support the respondent's allegation that the said copy was ready for collection since April, 2020.

The learned counsel for the applicant further reiterated her challenge to the counter affidavit on ground that, the third respondent did not sign it. She also argued that, the third respondent did not sign the replying submissions though the same shows that he had signed it. She attached an affidavit of the third respondent showing that he did not sign the two documents.

I have considered the arguments by the parties, the record and the law. Before I proceed to consider the application, I feel legally obliged to resolve the issue raised by the applicant on the propriety of the counter affidavit of the respondents. Thought the first and second respondents did not make any reply to that allegation, I must resolve the same since it has properties of a preliminary objection against the counter affidavit.

The issue regarding the counter affidavit is thus, *whether or not the counter affidavit was defective for the allegation that it was jointly signed by the third respondent who disowns it.* In my view, the answer to this issue cannot be affirmative on the following grounds: in the first place, the law guides that, affidavits, which include counter affidavits, take place of oral evidence. Now, since the first and second respondents did not reply to the challenge lodged against the counter affidavit, it is taken that they conceded to that fact. The remedy is not thus, to vitiate the entire counter affidavit, but to expunge or remove the evidence of the third respondent from that counter affidavit. It is thus, considered that, he did not sign it. The same is thus, taken as signed by only the first and second respondents.

On the other side, the applicant is also to blame for being contributory to this aspect of the matter. This is because, she joined the third respondent as a party to this application. It was in fact, unnecessary to join him since he had been excluded from the proceedings before the DLHT as correctly argued by the applicant's counsel herself. I therefore, answer the issue posed above negatively that, the counter affidavit was not absolutely defective for the allegation that it was jointly signed by the third respondent who disowns it. I thus, reject the prayer by the learned counsel for the applicant for declaring the counter affidavit defective. However, the court will consider the same to have been signed by only the first and second respondents as observed earlier.

As to the challenge regarding the replying submissions by the respondents, the court will also consider them as being signed by the first

and second respondent only for the same reasons shown above when discussing the authenticity of the counter affidavit.

I will now consider the merits or otherwise of the application at hand. The law on extension of time guides that, extension of time is granted at the discretion of the court upon the applicant adducing sufficient reasons. The discretion is however, exercised judiciously. The major issue here is, therefore, *whether or the applicant has adduced sufficient reasons for this court to grant the prayed extension of time.*

According to the applicant's affidavit and the submissions by her counsel, the major reason for the delay was that, the applicant was supplied with the copy of the impugned judgement by the DLHT belatedly on the 5th May, 2020 when the said 45 days for appealing had already expired. She however, promptly filed the application at hand on the 15th May, 2020. This was in fact, only 10 days from the date of receiving the copy of the impugned judgment. The record also supports the applicant that, the DLHT certified the copy as a true copy of the original on the 4th May, 2020. The contention by the respondents that the same was ready for collection since April, 2020 does not thus, carry any weight.

The facts narrated above show that the applicant promptly collected the copy the next day after it was ready for collection. The record further contains a copy of the letter dated 12th March, 2020 written by the advocate for the applicant applying for the copy of the impugned judgement with the view of appealing against it. The letter indicated that, it was received by the DLHT on the same date. The letter was also

attached to the affidavit supporting the application. The respondents' argument that the applicant did attach the copy of the letter is not thus, tenable.

Owing to the trend just highlighted above, the sub-issue that arises here is *from which date should the 45 days for appealing be computed*? In my view, the circumstances of the case and the law calls for computing the said time limitation from the date when the copy of the impugned judgment was certified and made ready for collection by the DLHT. This view is based on the following grounds; as I insisted in the case of **Patrick John Nkwama (t/a Nkwama Hardware and General Supplies) v. Bank of Africa Tanzania Limited, Civil Appeal No. 19 Of 2019, High Court of Tanzania, at Mbeya** (unreported), there have been some recent developments of the law which has shown light on how to compute time limitations. These recent improvements of the law were highlighted by the CAT in the cases of **The Director of Public Prosecutions (DPP) v. Mawazo Saliboko @ Shagi and Others, Criminal Appeal No. 384 of 2017, CAT at Tabora** (unreported) and **Samuel Emmanuel Fulgence v. Republic, Criminal Appeal No. 4 of 2018, CAT, at Mtwara** (unreported). In these criminal appeals, the CAT interpreted the provisions of section 361 (1) (b) of the CPA. The **Samwel Emmanuel case** followed the case of **Aidan Chale v. Republic, Criminal Appeal No. 130 of 2003 CAT at Mbeya (**Unreported). These provisions provide that, a criminal appeal from a subordinate court to the HCT shall be lodged within 45 days from the date of the impugned judgment. The proviso to such provisions of the law guides that, in computing the period of 45 days the

time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded. The CAT further held in the two precedents just cited above that, in computing the said 45 days for an appeal under such provisions, there must be an automatic exclusion of the time required for obtaining such copies.

There is however, a slight difference between the guidance made by the CAT in the **DPP v. Mwazo Saliboko case** (supra) and the **Samuel Emanuel Case** (supra). The dissimilarity is on the reckoning date in computing the time limitation. On one hand, the former precedent guided that, the reckoning date is the date when the appellant receives the copies (especially where the date of receiving such copies is undisputed). On the other hand, the latter precedent guided that, the reckoning date is the date when the trial court certifies the copies as true copies of the original, i.e. when the copies are ready for collection.

In my view, though the light shade in the two precedents cited above related to criminal appeals, it can be applied smoothly and *mutatis mutandis* in civil matters for purposes of promoting fair trial and for abiding with the principle of overriding objective which requires *inter alia*, courts to deal with cases justly and speedily. This view is based on the fact that, fair trial is a fundamental right for parties to court proceedings as enshrined under article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977, Cap. 2 R. E. 2002. These provisions do not discriminate civil cases from criminal cases as far as the promotion of fair trials is concerned. Moreover, the proviso to section 361 highlighted above carries a similar spirit to the one under section 19 (2) of the Law of Limitations

Act, Cap. 89. These provisions do also have almost similar wordings. The gist of section 361 of the CPA was highlighted above. On the other hand, section 19 (2) of Cap. 89 guides *inter alia* that, in computing the period of limitation prescribed for an appeal, the period of time requisite for obtaining a copy of the decree or order appealed from shall be excluded.

It is also trite principle that, in common law jurisdictions, statutes which are in *pari materia* are interpreted similarly; see the guidance by the CAT in case of **Tanzania Cotton Marketing Board v. Cogecot Cotton Company SA [1997] TLR 165.** Besides, adopting the guidance in the two CAT presidents will constitute an effective compliance to the doctrine of overriding objective mentioned above.

Owing to the above reasons, I adopt the guidance in the two precedents of the CAT namely; the **DPP v. Mwazo Saliboko case** (supra) and the **Samuel Emanuel Case** (supra). However, since the applicant in the case at hand was a free person and not in any confinement, I take the reckoning date for the time limitation of appealing to be the date when the copy of the impugned judgment was certified by the DLHT as the true copy of the original, i. e. when the same was ready for collection. According to the record, the same was certified on the 4th May, 2020 as hinted earlier. The sub-issue posed herein above is therefore, answered thus, the 45 days for appealing in the matter at hand should be computed from the said 4th May, 2020.

It follows thus, that, the applicant filed this application on 15th May, 2020 even before the expiry of the 45 days, the same being computed

from the 4th May, 2020. Owing to the interpretation of the law shown above, she could have thus, filed her appeal even without filing this application. However, she has not done so for prosecuting this application, though unnecessarily so.

Due to the reasons shown above, I answer the major issue affirmatively that, *the applicant has adduced sufficient reasons for this court to grant the prayed extension of time*. I thus, grant the application. The applicant shall file the appeal within 14 (fourteen) days from the date hereof. Each party shall bear his own costs because the circumstances do not show that the respondent contributed in any way to the filing of this application so as to be condemned to pay costs. It is so ordered.

THE HIGH COURT OF TANZANIA

JHK. UTAMWA.

JUDGE

18/02/2021.

18/02/2021.
CORAM; JHK. UTAMWA, J.
Applicant: present and Ms. Martha Gwalema, advocate.
Respondent: present all three.
BC; Mr. Kibona, RMA.

Court: Ruling delivered in the presence of all the parties and Ms. Martha Gwalema, learned counsel for the applicant, in court, this 18th February, 2021.

JHK. UTAMWA
JUDGE
18/02/2021.