

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**MISC. LAND APPLICATION NO. 46 OF 2019**

*(Arising from District Land and Housing Tribunal Land Case No.71/2018)*

**MOHAMED S. GAMBO.....APPELLANT**

**VERSUS**

**CHANDE CHINGWILE.....RESPONDENT**

**RULING**

*26/02/2021-19/03/2021*

**BAHATI,J.:**

This is an application by Mohamed S Gambo which is brought by way of chamber application under section 38(1) Land Dispute Courts Act, No. 2/2002 and any other enabling provisions. The applicant is seeking an extension of time within which to file an appeal out of time against the Judgment and Decree of the District Land and Housing Tribunal Land at Tabora which was delivered on 11/6/2019 by Waziri M.H, Chairman.

Dissatisfied with the decision of the District Land and Housing Tribunal, the applicant Mohamed S Gambo filed to this court seeking the following orders namely;

- i. Seeking leave of the court to file an appeal out of time*
- ii. Costs of and incidental to this application provided for*
- iii. And any other relief or orders as this court may deem just fit and equitable to grant.*

When the matter was called on for hearing, parties disposed of by way of written submission. The applicant was represented by Mr. Lucas Ndanga while the respondent was unrepresented.

In his submission, the applicant in support of his application prayed to adopt the affidavit to be a part of his written submission. He submitted that the applicant did not sleep over his right because as soon as he lost his matter in Miscellaneous Land Case Application no. 46 of 2019 he urgently took several steps to look for a remedy. The first step he took was to apply for a judgment copy in the District Land and Housing Tribunal of Tabora, a copy of a letter to request for judgment dated 25<sup>th</sup> June 2019.

He further submitted that in spite of having written a request letter on 25<sup>th</sup> June 2019 for the supply of a judgment copy the same was not supplied. In this situation where the delay was caused by the

tribunal itself the delay in getting a copy of the judgment is a good cause for delay in appealing out of time. To support his argument he cited the case of **Haruna Yorogwe. Versus Yahaya Mohamed. (Misc. Land application no. 41 of 2016)** where Mallaba, J allowed for applying for an extension of time to the applicant one Haruna Yorogwe. The judgment of judge Mallaba is in line with the judgment in the case of **Mary Kimaro Vs Khalfan Mohamed 1995 TLR 2002.**

He further submitted that because of failing to get supplied with the copy of the same in step one. The second step by seeking an audience with the District Commissioner of Tabora on 20<sup>th</sup> August 2016, which also did not bear any fruits. Though the District Commissioner tried to push his agenda by phone to enable the applicant to be supplied with a copy of judgment his effort did not succeed too. For that matter, he switched to plan B where in this plan he went to complain before the District Security Office on 14<sup>th</sup> July 2019 whose effort also did not help.

He further submitted that because of the failure of plan B, the applicant resolved to seek an audience with TAKUKURU (PCCB) on 3<sup>rd</sup> July 2019. In this office, the complaint was positively received. As soon as this complaint was received immediately PCCB phoned the District

Land and Housing Tribunal whereas after this struggle he finally got the judgment copy in July 2019.

With those steps and reasons propounded above, he prayed to this court to look at these reasons as good or reasonable to allow the extension of time under Section 14 (1) of the Law of Limitation Act, Cap. 89 which provides that;

*“The court may for any reason or appeal an application, other than an application or an execution of a decree, and applications for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.”*

Read together with the provisions of Section 11 (1) of the Appellate Jurisdiction Act, Cap.141 which gives the High Court the mandate to entertain such application in line with Article 107(2) (e) and Article 13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977 which provides that, *“to discharge the justice without being tied up with technical provisions which may dispensation of justice” in line with Article 13 (6) (a) “when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and the right of appeal or other legal remedies against the decision of the court of the other agency concerned”.*

Similarly, in the case of **Essaji and Others vs. Salanki (1969) EA 218, The Court Of Eastern Africa** stated;

*“To refuse an application for extension of time where there are sufficient reasons is bad in law. There have been sufficient reasons by the applicant to warrant the extension of time as applied for. In the first place, the delay was occasioned by a bona fide belief that is legally excusable.”*

On the premises, he prayed that the extension of time of this application for appealing out of time be granted.

In response, the respondent submitted that as per issues raised by the applicant in his submission the law requires that all suits and /or appeals unless sufficient causes for delay have been advanced shall be filed within a specified period subject to the law of limitation.

He further advanced that the rationale being to ensure that litigation end on time and to prevent parties to the suit from abusing the court process. To cement the point, he submitted that section 4 of the Law of Limitation Act, Cap. 89 provides for;

*“The period of limitation prescribed by this Act, in relation to any proceeding shall subject to the provision of this Act hereinafter contained commence from the date on which the right of action for such proceeding accrues.”*

The law requires that they shall be lodged within 60 days after the date of the decision or order against which the appeal is brought. This is according to section 38(1) of the Land Disputes Courts Act, No. 2 of 2002.

He submitted that in the light of the provision of the law, it is quite clear that the appellant does not have sufficient reasons for his delay contrary to the law. Since the district tribunal decided his case on 11<sup>th</sup> June, 2019, the judgment document has been signed by the Chairman on 1<sup>st</sup> August, 2019 which proves that the judgment document was available at the tribunal within the prescribed time of the law but the appellant was negligent.

He further submitted that the applicant in his submission submitted that he went to the District Commissioner of Tabora on 20<sup>th</sup> August 2016 seeking an audience, while the case which he is asking leave to appeal out of time is appeal No. 71 of 2018 which emanated from Sikonge Ward Tribunal of which was instituted before the Sikonge Tribunal in the year, 2018 and decided in July 2018. Also submitted that he went to TAKUKURU(PCCB) and PCCB officer phoned the District Land and Tribunal hence supplied him a copy of the judgment in July 2019, while in his affidavit under paragraph 7 (iv) states;

"After my hard struggle I eventually managed to get the said copy of the judgment in September 2019 by using an extra source, the Prevention of Corruption and Combating Bureau PCCB, further went to Tanzania Security Officers for seeking a pardon.

He submitted that the applicant's submission is very contradictory since it does not have supportive documents that show his unprocedural efforts rather his submission is supporting that is negligent, swindler and conman. Also does not have sufficient reasons for his delay but has forged information. It has been also held with approval in the case of **Salum Sururu Nabhani V Zahor Abdulla Zahor [1988] T.L.R P.41** where the court dismissed the appeal due to the appellant's failure to advance sufficient reasons justifying his appeal out of time.

He prayed to the court to dismiss the application with costs since the applicant has not shown sufficient reasons offending the provision of the Law of Limitation Act, Cap 89.

Having carefully gone through the submission made by both parties, the main issue for determination by this court is whether the applicant has shown sufficient cause for extension of time.

It is a trite law that a party seeking an extension of time to file an appeal has to show a good and sufficient cause for his delay. The

position of the law is clear that the court may for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or application. That position of the law has been expounded in the case of **Mumello V Bank Of Tanzania (2006) IEA 227 (CAT)** where it is a settled principle of the law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

Upon perusal of the court records, I noted that it is true that according to the A1 exhibit, the applicant applied to the Chairman of the District Land and Housing Tribunal for Tabora on 25<sup>th</sup> June, 2019 on the matter which was decided on 11<sup>th</sup> June, 2019. There is nowhere written that the applicant was given the copy. Although the respondent, in this case, is trying to convince the court that since the District Tribunal decided his case on 11 June, 2019 the judgment has been signed by the Chairman on 1<sup>st</sup> August, 2019 which proves that the judgment document was available at tribunal within the prescribed time of the law but the appellant was negligent.

Nevertheless, I differ with the respondent, even if there is no tangible evidence to prove that the applicant went to the District Commissioner on 20<sup>th</sup> July 2019, and District Security Office then went

to TAKUKURU which eventually managed to get the said copy of the judgment in September 2019. Since the applicant kept on making follow-ups until 3 July 2019 when copies of judgment and decree were made available to him in late July, 2019. In my opinion, the lateness to procure a copy of judgment may be a sufficient cause for an extension of time. The reason for promptly requesting copies of judgment and decree and filing the instant application, it cannot be said that the delay to pursue an appeal was not on account of the applicant's inaction or negligence as suggested in the submissions for the respondent.

It is my stand that getting a copy of the judgment at the right time is the right of the parties, had he been told that he could get the copy of the judgment, he would not bother to go all the way to pursue his rights. The delay was due to reasons which were beyond the applicant's control as to when he could get a copy of the judgment to enable him to appeal.

In the upshot, the applicant has shown sufficient cause for his delay in filing his intended appeal. Consequently, the applicant's application for extension of time to the applicant to file an appeal in Land Application number 46 of 2019 in the District Land and Housing Tribunal for Tabora is hereby allowed. I make no order as to costs.

It is ordered accordingly.

*A. A. Bahati*

**A. A. BAHATI**

**JUDGE**

**19/03/2021**

Ruling delivered under my hand and seal of the court, this 19<sup>th</sup> day  
March, 2021 in the presence of both parties.

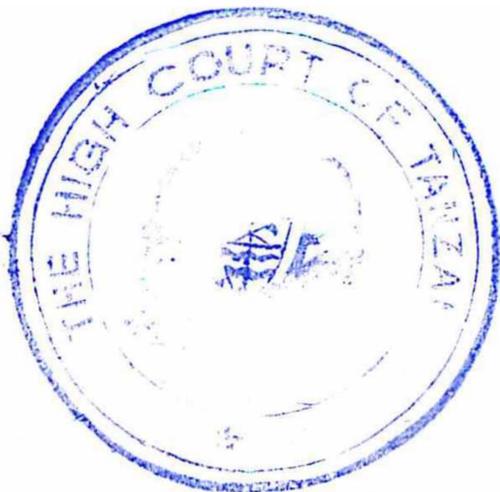
*A. A. Bahati*

**A. A. BAHATI**

**JUDGE**

**19/03/2021**

Right of appeal is explained.



*A. A. Bahati*

**A. A. BAHATI**

**JUDGE**

**19/03/2021**