

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

MISC. LAND APPLICATION NO. 70 OF 2020

(Arising from Land Case No. 63/2012 of the District Land and Housing Tribunal –
Kigoma before Waziri M. H. - Chairman)

ZAIDI JUMANNE ZAIDI [administrator of the estate of the late

JUMANNE ZAIDI] **APPLICANT**

VERSUS

RAJABU ABDALLAH MBANO **RESPONDENT**

R U L I N G

8th & 24th March, 2021

I.C. MUGETA, J.

In this jurisdiction there are two settled principles or rules of practice. Firstly, that one cannot advance impecuniosity as a reason for failure to assert his legal rights timely. Secondly, that ignorance about what to do in terms of procedures to get a remedy for a legal right is not a good defence. I am at a point of deciding the limitation to the application of these principles.

This is an application for extension of time to file an appeal out of the prescribed time. The decision involved was delivered on 24/8/2020, by F. Chinuku, Chairperson of the District Land and Housing Tribunal of Kigoma. However, it had been composed by M.H. Waziri, Chairman on 6/7/2020. At the time of its delivery, Waziri was no longer Chairman of the Tribunal. The copy of that judgment was supplied to the applicant on 10/9/2020 well within the appeal period, counting from the date the judgment was delivered. However, no appeal was filed. Before me the applicant submitted that he did not file an appeal because counting from 6/7/2020 when judgment was composed to 10/9/2020 when a copy was supplied the forty five days appeal period had expired. Ignorance of the law.

On 15/10/2020, the applicant filed Misc. Land Application No. 52/2020 seeking extension of time to appeal. The application was struck out on 16/11/2020 on account of incompetency for citing wrong provisions of the law, hence, this application which was filed on 14/12/2020. Mr. Method Kabuguzi, counsel for the respondent contested the application and submitted that each day of the delay is unaccounted for and that when the applicant got a copy of the judgment the appeal period had not expired. When asked to account for the delay from 16/11/2020 when the first

application was struck out to 14/12/2020 when this application was filed, he lamented that filing fees in the High Court are on the high side. That he spent that time looking for filing fees. Impecuniosity!

As submitted by Mr. Kabuguzi, learned counsel, it is also now settled that an application for extension of time can be granted upon showing a good cause for the delay and accounting for each day of the delay. Issues of lack of legal knowledge on laws and procedures or poverty are out of context. Therefore, if I have to follow the law strictly, the application has no merits because no good cause for the delay has been demonstrated and each day of the delay remains unaccounted for. However, the confusion started with the judgment bearing a different date from that of its delivery. Supplying a judgment with two different date is a knowledge gap on part the Tribunal officials. Under the circumstances, strict adherence to the law shall result into injustice.

Herein court I saw and heard the applicant who appeared before me. I entertain not a slightest doubt that he is indigent and a lay person. If I was sure he is the only person to blame for his economic condition, I would have already concluded this ruling. It is my view, however, that he is just a subset of the majority people who badly need legal aid which the state is unable to offer at least for now. For lack of legal service the applicant failed to file his

appeal in time due to ignorance. For lack of quality legal service the applicant filed an incompetent application which was struck out. The cumulative effect of those inadequacies is multiplication of tasks as courts have to attend several applications before dealing with the main case/appeal. The legal sector ought to think about the time and resources the courts spend on processes of this nature which unfortunately are not uncommon. Would not less time and little resources have been spent on the appeal had the applicant been properly guided "ab initio" through a functional legal aid scheme?

For the foregoing, and for the purpose of this ruling only, I hereby hold that ignorance of the law and errors on documents supplied misled the applicant. In the same vein, indigence caused his delay to knock the doors of the court. These factors constitute, for the purpose of this application, a good cause and account for each day of the delay. Consequently, and for the end of justice, I exercise my absolute discretion to extend time in favour of the applicant. For avoidance of doubts, I repeat, the "*ratio decidendi*" applied in reaching this decision is for the purpose of this application only. It is not intended to establish new rules of practice.

Application is allowed. The intended appeal to be filed within thirty (30) days from the date of this order.



Court: Ruling delivered in chambers in the presence of the applicant and in the absence of the respondent, represented by his advocate Mr. R.G. Kabuguzi.

Sgd: I.C. Mugeta

Judge

24/3/2021