

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. LAND APPLICATION NO. 4 OF 2020**

(Originating from Land Application No. 30 of 2019 in the District Land and Housing

Tribunal for Lindi at Lindi)

**KIPENDA NGALINGWA KILINDO-----APPLICANT**

**VERSUS**

**FELICIAN KIMBACHE.....1<sup>ST</sup> RESPONDENT**

**ABDALLAH KIMBACHE.....2<sup>ND</sup> RESPONDENT**

**JUSTINE KIMBACHE.....3<sup>RD</sup> RESPONDENT**

**HEMEDI KIMBACHE.....4<sup>TH</sup> RESPONDENT**

**PETRO DAUD.....5<sup>TH</sup> RESPONDENT**

**JUDITH KIMBACHE.....6<sup>TH</sup> RESPONDENT**

**DAMALES JOHN.....7<sup>TH</sup> RESPONDENT**

**RULING**

9 Febr. & 9 March, 2021

**DYANSOBERA, J.:**

The applicant lost his suit he had filed before the District Land and Housing Tribunal in Land Application No. 30 of 2017. His appeal he filed

before this court vide Land Appeal Case No. 7 of 2019 was dismissed on 13<sup>th</sup> day of December, 2019 after it was found to have been filed out of the prescribed time and without leave of the Court. Undaunted, the applicant has filed this application seeking an extension of time in which to lodge his appeal. The application has been filed under section 41 (2) of the Land Disputes Courts Act [Cap. 216 R.E.2002] as amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, 2016 seeking extension of time within which to file an appeal to this court against the judgment and decree of the District Land and Housing Tribunal for Lindi. An affidavit duly affirmed by him has been filed in support of the application.

The application has been resisted by the respondents by way of a counter affidavit duly sworn by Mr. Justine Kimbache, holding powers of attorney of the respondents.

The hearing of this application was conducted by way of written submissions.

Arguing in support of the application, the applicant, admitting that the grant of extension of time is discretionary and upon showing good and sufficient causes, contended that he was not supplied with the certified copies of decree and judgment of the Land Application No. 30 of 2017 at the right time to allow him to appeal in compliance with the mandatory requirements of O. XXXIX rule 1 (1) of the Civil Procedure Code [Cap. 33

R.E.2019]. He explained that the judgment of the Tribunal was delivered on 1.3.2019 but the certified copies were supplied to him on 1.4.2019; however, the appeal which was lodged on 17.4.2019 was kept aside pending its admission prior to the payment of court fees and that it was not until on 6.5.2019 when it was admitted. It is the applicant's argument that he, being aware of the requirements of section 19 (2) of the Law of Limitation Act [Cap. 89 R.E.2019] that the exclusion of time is not automatic, he has come to this court seeking the extension of time.

In his further submission, the applicant insisted that the court in granting the extension has to take into account also other factors including length of the delay, reasons for the delay and the degree of prejudice. He thus invites this court to accede to his application and grant the extension of time.

On behalf of the respondents, Justine Kimbache agreed with the applicant that the extension of time is within the discretion of the court. He added, however, that the discretion has to be exercised judiciously and the overriding consideration being the presence of the sufficient cause. He argued that a mere delay in supplying the documents alone cannot amount to a good cause without material proof showing some efforts taken by the applicant to attain such documents. Justine asserted that the applicant did not prove the exact date when he wrote a letter requesting those

documents and that he has failed to show that after he received those documents he acted expeditiously and brought the application in good faith. He concluded his submission by stating that the applicant has failed to account for each delay.

The issue for determination is whether the applicant has demonstrated sufficient cause for the delay. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. The Court of Appeal had occasion to elaborate on what constitutes sufficient cause in the case of **Regional Manager, TANROADS v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported) where it observed:

*"What constitutes "sufficient reason cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules"*

Having considered the competing arguments of both sides, I agree that the circumstances of the case and the interest of justice demands that this court should exercise its unfettered discretion and grant the extension of time as the denial will, undoubtedly, stifle the applicant's case. In the case of **Minister for Energy and the Attorney General and East**

**African Gold Mines Ltd as Intervenor v. Mobrama Gold Corporation Ltd.** [1998] TLR No. 425, the Court held that;

*'It is generally in appropriate to deny a party an extension of time where such denial will stifle his case; as the respondent's delay does not constitute a case of procedural abuse or contemptuous fault and because the applicant will not suffer an prejudice, an extension should be granted'*


There is no dispute that the court has jurisdiction to extent the time even where the application has been made after the expiry of time provided that the court is satisfied that the applicant had no intention of ignoring or flouting the law and his failure to obey the dictates of the law was due to extraneous circumstances not attributable to the applicant's fault.

Having taken into account all the circumstances of the case, I am satisfied that the applicant has given sufficient reason for delay in lodging the appeal. Besides, he has been ardent in pursuit of his legal rights. The application is thus allowed and the applicant is granted leave to file his appeal within 45 days from the date of this ruling.

Costs to be in the cause.

Order accordingly.



  
W. P. Dyansobera

Judge

9.3.2021

Dated and delivered at Mtwara this 9<sup>th</sup> day of March, 2021 in the presence of the Priscila Mapinda, learned counsel for the applicant and Justine Kimbache, holding powers of attorney for the respondents.



A handwritten signature in blue ink, appearing to read "W. P. Dyansobera".

W. P. Dyansobera

Judge



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