

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 49 OF 2020

**(Originating from Land Application No. 10 of 2019 in the District Land and Housing Tribunal
for Karatu)**

PASKALI LULU.....APPLICANT

VERSUS

LAZARO LALIYO.....RESPONDENT

RULING

23/02/2021 & 29/04/2021

GWAE, J

The applicant has moved this court by the wording of the quoted provision of the law herein under seeking for enlargement of time within which to file his appeal from the decision in Application No. 10 of 2019 which was delivered on 30th April 2020 by the District Land and Housing Tribunal of Karatu at Karatu.

“S. 14. -(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.”



The applicant's application is supported by his sworn affidavit where the reasons for the delay are explained as follows; that the decision in Application No. 10 of 2019 was delivered on 30th April 2020, however his efforts to make a follow up on the copies of judgment, decree and proceedings were fruitless as the trial chairman was not in office as his contract had come to an end. Consequently, the applicant was availed with the certified copies on the 2nd June 2020. Nevertheless, the applicant still could not lodge this application immediately after receipt of the certified copies because he had financial difficulties to meet the advocate's costs for preparation of the appeal.

The respondent on the other hand filed his counter affidavit rebutting the application on the reasons that the applicant had not shown/proved that he applied to the tribunal to be supplied with the copies of the judgment, decree and proceeding. Furthermore, the respondent was of the opinion that, even if we are to assume that the applicant was availed with the certified copies on 2/06/2020 his delay to file this appeal which is about 56 days is with no good cause but rather it is as a result of the applicant's negligence, lack of seriousness and his failure to apply for the said copies on time.

When the matter was fixed for hearing, the parties appeared in person unrepresented. Being lay persons, they had nothing to add, thus their affidavits were adopted respectively.

The provision of the law under section 19 (2) of the Law of Limitation Cap 89 R.E 2019 is very clear on the exclusion of the time in computation of time limitation where a party has applied for copies of judgment, decree and proceedings. For easy of reference, section is hereunder reproduced;

“19 (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.”

~~Following the above quoted provision of the law, the applicant's intended~~
appeal, if at all, was delayed for reasons of failure to obtain certified copies on time the time spent in obtaining such copies are to be excluded. However, as rightly submitted by the respondent that the same must have necessary proof that the applicant indeed applied to the tribunal to be supplied with certified copies of the judgment, decree and proceedings. Nevertheless, the applicant's statement that he was making a follow ups on such copies is not supported with any tangible evidence.

However, my carefully scrutiny of the applicant's application, reveals that, the decree intended to be appealed against was issued on 02/06/2020 unlike the copy of the judgment which does not indicate as to when the same was issued.

Yet, for this court to achieve a justly end, I feel obliged to buy the story of the applicant that the copies were supplied to him on 02/06/2020 because even the respondent has not equally proved that, the copies were ready for collection before 02/06/2020.


As the applicant was able to collect the copies of the judgment on the 2nd June 2020 and he subsequently filed this application on the 28th July 2020, the applicant was therefore was late for fifty-seven (57) days. I expected the applicant to have accounted for the 57 days delay as it is a position of the law that the applicant has to account for each day of delay by giving sufficient reasons for the same. See the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (Unreported-CAT).

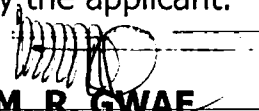
At paragraph 8 of the applicant's affidavit, the applicant has stated that the reasons for the delay are; failure to obtain the copies of the proceeding and insufficient funds. With due respect with the applicant, the later reason is of no-good cause, for this court to assume that the applicant had insufficient funds and that it was on 28/07/2020 when he obtained the money to engage an advocate. Allowing such excuses will open up a pandora box for everyone to rely on the excuse of insufficient fund without giving sufficient cause which, in fact, shall inevitably defeat the purpose of having time limitation. the asserted lack of money to institute a case was at once found not to be a good cause by the Court of Appeal

in **Ohamed Amoor Khalid and Mahamoud Ayub Ibrahim v Ahmed Issa Khalfani** (1994) TLR 136 where it was held that lack of funds to institute an appeal within sixty days as required by the rules is an irrelevant reason.

Similarly, there are paralegal lawyer/advocates such as those working with Legal and Human Rights Centers which offer legal aids. Thus, if the applicant had no monetary ability to secure an advocate, he would have sought assistance from legal aids from Non-Governmental Organizations

That being said, the application is hereby dismissed for want of merit. Costs of this application shall be borne by the applicant.




M. R. GWAE
JUDGE
29/04/2021