

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

**AT TABORA**

**MISC. LAND APPLICATION NO. 7 OF 2020**

*(Arising from Land Application No. 42 of 2017 Tabora District Land  
and Housing Tribunal for Tabora.)*

**MLELA RAMADHANI ----- APPLICANT**

**VERSUS**

**MAHONA BUTUNGULU ----- RESPONDENT**

**RULING**

*Date: 02/07&16/07/2021*

**BAHATI, J.:**

The applicant **MLELA RAMADHANI** instituted this application under section 41 of the Land Disputes Court Act, Cap. 216 as amended by section 41(2) of the Written Laws (Miscellaneous Amendment) Act No. 2 of 2016 seeking for the orders of extension of time to file an appeal, costs of the application, and any other relief this Court may deem fit and just in the circumstances of the application.

The grounds as deposed in the affidavit upon which extension of time is sought run as follows.

- 1. That he applied in the District Land and Housing Tribunal (DLHT) for Tabora for recovery of their family land at Kipela suburb, Tumbi village – Tabora.*
- 2. That, the DLHT decided in favour of the respondent on 03/12/2018, and thereby he was aggrieved with the decision hence applied for a copy of the judgment on the next day 4/12/2018.*

3. *That, he was not given a copy of judgment despite several follow-ups whereas he was told the tribunal here at Tabora had no typist and their files were to be sent to Nzega for typing process so he had to wait.*
4. *That, eventually he was supplied a copy of the judgment on 19/03/2019.*
5. *That, on 8<sup>th</sup> May, 2019 he filed an application in this Court seeking extension of time within which to lodge his appeal based on the reasons mentioned above but unfortunately the same was struck out on 10/02/2020 for the wrong citation of enabling provision but with leave to refile.*

In his counter-affidavit, the respondent Mahona Butungulu vehemently disputed the application and required the applicant to account for each day of his lateness.

When the application was called for hearing, both the applicant and respondent appeared in person unrepresented. The applicant requested the Court to adopt his pleadings to be part of his submission whereas the respondent prayed the same.

Having perused through the previous records which led to this application and I noted that in the District Land and Housing Tribunal the applicant Mlela Ramadhani was suing as an administrator of the estate of his late Father Mganga Mlela but in this application, it is not indicated if he is still suing in that capacity.

It is a settled rule of practice that, a case filed by the executor or administrator of the deceased's estate, should indicate in the title

that the party thereto is an administrator of the deceased's estate. However, the omission to indicate that fact in the title of the case does not vitiate the proceedings, if there is evidence that letters of administration were tendered and admitted.

In this regard, I wish to borrow the wisdom of learned Justices of Appeal in the case of ***Suzana S. Waryoba vs Shija Dalawi, Civil Appeal No. 44 of 2017***, CAT at Mwanza (unreported) where it was held that,

*"Before we pen off we wish to address the little disquieting aspect. This is that the appellant sued as an administrator of the estate of the late Stanislaus Waryoba. However, that aspect did not reflect in the title of the case. We are of the considered view that the fact that Suzana Waryoba was suing in her capacity as an administratrix of the estate of the late Stanislaus Waryoba should have been reflected in the title of the case. However, we haste the remark that the omission is not fatal given that it was clear throughout that she was suing in that capacity and the judgment of the Primary Court which appointed her as such was tendered in evidence at the very outset. We only wish to accentuate that when a litigant sues as an administrator or administratrix of the estate, it is desirable that the same should be reflected in the title".*

There is no dispute that, in the lower tribunals the applicant was suing under the capacity of administrator of the estate of his late father so the omission to indicate in this application that he is suing under that capacity is curable as per the decision in Suzana's case (*supra*).

Having heard both parties the issue is whether the applicant has shown sufficient reasons 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 such cases including the case of **Mumello V/S 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.

Having perused on the records and the substance of the application, of all reasons laid down by the applicant, the major one is that the delay was caused by the failure of the District Land and Housing Tribunal to supply him a copy of the judgment which would enable him to file an appeal to this court on time.

I am satisfied with the reason advanced by the applicant that the delay to file his appeal was caused by the failure of the District Land and Housing Tribunal to supply him with necessary documents to file

his appeal on time despite all efforts he made as demonstrated in the annexure MR1.

Moreover, the applicant has demonstrated that with all efforts he managed to file an application of this type in this court but it ended up being struck out for the wrong citation of enabling law and the court granted him leave to refile the application, I find it as a sufficient reason to warrant the extension of time.

Having said that, I hereby grant the application; the applicant is now at liberty to file the respective appeal not later than forty-five (45) days from the date of this ruling. Costs to follow events.

Order accordingly.



**A. A. BAHATI**

**JUDGE**

**16/07/2021**

Ruling delivered under my hand and seal of the court in the chamber, this 16<sup>th</sup> day July, 2021 in the presence of both parties.



**A. A. BAHATI**

**JUDGE**

**16/07/2021**

Right of appeal is fully explained.



**A. A. BAHATI**

**JUDGE**

**16/07/2021**

