

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPLICATION NO. 33 OF 2021
*(Originating from Land Application No. 19 of 2019
in the District Land and Housing Tribunal for Kyela at Kyela)*

YONA MWAKYOMA	1ST APPLICANT
PYUTI MWAKUBUNGA.....	2ND APPLICANT
LWITIKO MWAMASINGA.....	3RD APPLICANT
JOSEPH WILLIAM.....	4TH APPLICANT
NGUMBU SOPELAKO.....	5TH APPLICANT
AIDAN MWANTUKE.....	6TH APPLICANT
ELIAS MWANGALAWA.....	7TH APPLICANT
ATUJALILE MWALWIMBA.....	8TH APPLICANT
SUKA MWAKYOMA.....	9TH APPLICANT

VERSUS

ALFRED MWANDALI.....RESPONDENT

R U L I N G

Dated: 5th & 20th August, 2021

KARAYEMAHA, J

This is an application for extension of time within which to lodge an appeal out of time against the decision of the District Land and Housing Tribunal (DLHT) for Kyela at Kyela in Application No. 19 of 2019. The said decision was delivered on 12/6/2020. This application, which is based on section 41 (2) of the Land Disputes Courts Act, [Cap.216 RE 2019] was lodged on 18/5/2021 following the dismissal of

the 1st application lodged on 15/9/2020 for being incompetent on 12/5/2021 by Hon. L.M. Mongella, J. Supporting the application is the affidavit of the applicants setting out grounds on which a prayer for extension of time is based.

A brief background in respect of this matter can be stated as follows. Way back in 2008 Washington Mwakipesile sued Mrithi Hussein Mapunda and Keneth Mwamunyu in Land Case No. 09/2008 at the DLHT for Rungwe for acquiring his land for cattle path. Washington Mwakipesile won the case and the DLHT ordered Mrithi Hussein Mapunda and Keneth Mwamunyu who were respondents thereto to pay him Tshs. 3,000,000/= as compensation for his land acquired for cattle path and the same had to be compensated within two months from the date of Judgment. When the respondents failed to pay Tshs. 3,000,000/= Washington Mwakipesile, the decree holder, via application for execution No. 3/2010, prayed for attachment of respondents' farms. When the prayer for attachment of farms of judgment debtors was granted, Harvert (T) LTD the Tribunal Brokers attached the farms. On 08/03/2017, Washington Mwakipesile was killed by unknown people. Following his death Alfredy Mwandali (the respondent in the current application) was appointed the administrator of the deceased's estate. During the same period Mrithi Hussein Mapunda and other villages

invaded the farms which is the land in dispute and planted paddy therein.

That invasion forced Alfred Mwandali to report the matter to the Village leadership. The invaders were summoned for amicable settlement and the matter was resolved amicably whereby the invaders promised not to repeat. Later in May, 2018 the Alfred Mwandali applied for customary right of occupancy over the land in dispute to the Itenya Village Council which approved the request and sent the same to the District Land Officer for final approval.

In his surprise, a short period there after Hussein Mapunda instituted a suit against the Alfred Mwandali over the land in dispute. The matter, however, ended in favour of the Applicant. Later, applicants in the instant application invaded the same land in dispute and planted paddy therein without the consent of the respondent. Each claimed ownership over land. The respondent was left with no option. He resorted in filing Land Application No. 19 of 2019 in the DLHT for Kyela at Kyela. At the conclusion of the trial, the trial chairman differing with assessors, declared the respondent in this application a lawful owner of the suit land. Unhappy with the judgment and decree passed on 12/6/2020, the applicants contemplated to appeal. They instantly

applied for the certified copies of the judgment, decree and proceedings on the same date.

In their sworn affidavit, the applicants took time to give an account of what transpired right from the inception of the application up until 8/9/2020 when they were availed with copies of judgment, decree and proceedings. The applicants averred that the judgment and decree were certified on 27/7/2020 and 28/7/2020 respectively while the proceedings were certified on 8/9/2020. It is further averred that on 8/9/2020 when they got those copies they were time barred. Following that on 15/9/2020 they lodged an application in the High Court seeking for extension of time but wit was struck out for being incompetent on 12/5/2021. They have now knocked again on the doors of this court with the instant application.

The respondent filed a counter - affidavit sworn by Alfred Mwandali, in which the conduct of the applicants was put on spotlight. Vide the counter affidavit the respondent has shifted blames on the applicants' negligence in following up the matter. He held the view that the applicants deliberately delayed to appeal. He averred concluding that the applicants have not advanced sufficient reasons for the current application to be granted.

The parties' contending arguments were, pursuant to the Court's order, presented by way of written submissions in conformity with the scheduling order drawn on 14/7/2021. While the applicant enjoyed the able services of Mr. Emily Ernest Mwamboneke, learned advocate, who drew and filed the submissions in support of the application, the respondent appeared in person and was the one who drew and filed the submissions in opposition to the application.

Getting us under way was Mr. Mwamboneke who argued after adopting the contents of the affidavit, that the delay was not occasioned by negligence on the part of the applicant but was greatly contributed by failure of the trial tribunal to supply copies of judgment, decree and proceedings promptly. Guided by the case **Alex Senkoro and 3 others vs. Eliyambuya Lyimo (as administrator of the estate of Fredrick Lyimo deceased)**, Civil Appeal No. 16 of 2017, the learned advocate observed that the current position of the law is that exclusion of days used to wait for supply of copies is automatic. He also referred this court to the provisions of section 19 (2) (3) of the Law of Limitation Act [Cap 89 RE 2019]. He argued further that since the delay was caused by technicalities of prosecuting an incompetent application No. 98 of 2020, then time for appealing should be extended. He referred this Court to the case of **Fortunatus Masha vs. William Shija and another**,

[1997] TLR 154 and **Tanzania Fish Processors Limited vs. Eusto K. Ntagalinda**, Civil Appeal No. 41/08 of 2018 (unreported). Mr. Mwampeshi was convinced that the delay was not inordinate and therefore, urged this court to grant the application.

On his side Mr. Mwandali opposed the application arguing that the applicants failed to make follow up of the copies of judgment, decree and proceedings and never informed the trial tribunal that they intended to appeal. The Respondent insisted that the first application was struck out because it lacked merits hence incompetent in law. He accordingly urged this Court to dismiss the application as the applicants have failed to show sufficient reason for lodging this application

In deciding this contested application, I find it apposite to first direct my mind to the requirements of section 41 (2) of the Land Disputes Courts Act. The said provision ran thus:

"An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

*Provided that, the High Court may, **for the good cause**, extend the time for filing an appeal either before or after the expiration of such period of forty-five days". [Emphasis is mine]*

It is settled that where extension of time is sought, the applicant will be granted, upon demonstrating sufficient cause for the delay. Conversely, it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur. See for example the case of **FINCA (T) Limited and Kipondogoro Auction Mart vs. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018.

In this case the Applicant gives reasons for delay to file an appeal as being a delay to be supplied with copies of judgment, decree and proceedings on time. Admittedly, the DLHT delivered its judgment on 12/6/2020. The record is categorical that the judgment and its decree were certified on 27/07/2020 and 28/07/2020 respectively meaning that they became consumable by the public as from that 27/07/2020 and 28/07/2020 respectively. The applicants averred that they were availed copies on 8/9/2020. Obviously, time started to run from 8/9/2020 because the provisions of section 19 (2) of the Law of Limitation excludes the day on which the judgment was delivered and the period of time for obtaining the copies of judgment, decree and proceedings. The trite position is that the period between the delivery of judgment and

obtaining the copies ought to be excluded in computing time. This position was accentuated in **DPP vs. Mawazo Saliboko @ Shagi and 15 others**, Criminal Appeal No. 384 of 2017 and **Samuel Emmanuel Furgence vs. The Republic**, Criminal Appeal No. 4 of 2018 (both unreported). In **DPP vs. Mawazo Saliboko @ Shagi** (supra) the Court of Appeal of Tanzania held thus:

"The learned Judge was of the view that, though the appellant filed the appeal within 45 days after being served with the copy of the proceedings, he ought to have applied for extension of time to do so because he was time barred from the date of impugned decision. On our part, we are of the decided view that, the intention of the legislature under the proviso to section 379 (1) of the Criminal Procedure Act was to avoid multiplicity of, and delay to dispose of cases. That is why it provided for automatic exclusion of the time requisite to obtain a copy of the proceedings, judgment or order appealed from".

See also the case of **Alex Senkoro and 3 others vs. Eliyambuya Lyimo** (supra).

In view of the foregoing, it is my considered view that the contention by the respondent that the applicants were late in preferring

the appeal due to their negligence is, with respect fallacious and untenable. The applicants were not required to file Misc. Land Application No. 98 of 2020 in the first place. Having received the copies on 8/9/2020, the applicants had 45 days ahead till 23/10/2020. So, they had to file the appeal right away.

Up to 23/10/2020, the applicants were genuinely pursuing Misc. Land Application No. 98 of 2020 till 12/5/2021 when it was struck out for being incompetent. It goes without saying, therefore, they were time barred technically because, as alluded to above, applicants were to file their appeal by 23/10/2020. The settled position of law is that delays that arise as a result of pursuit, by the applicants, of a matter which turns out to be defective or untenable are excusable. This principle was accentuated in **Fortunatus Masha vs. William Shija** [1997] TLR 154, and was fortified in the recent decisions of the Court of Appeal of Tanzania in **Tanzania Fish Processors Limited vs. Eusto K. Ntagalinda**, Civil Appeal No. 41/08 of 2018 (unreported) and **Amani Girls Home vs. Isack Charles Kanela**, Court of Appeal of Tanzania – Civil Application No. 325/08 of 2019 (Mwanza – unreported) in which diligent pursuit of the appeal through unsuccessful applications was deemed to be sufficient to warrant extension of time. Incepting this position of law, Hon. Ismail, J. stated in the case of **Dina Anyango vs.**

Babuu Garende Samson, Misc. Civil Application No. 96 of 2019 (High Court – Mwanza) that:

*They are acceptable delays, and are preferred to, **in legal parlance, as technical delays, and they constitute a sufficient cause for enlargement of time within which to institute an appeal.***

[Emphasis supplied]

In the instant case, applicants genuinely pursued Misc. Land Application No. 98 of 2020 till 12/5/2021. The successful objection resulted to its being struck out. The applicants are now benefiting from the underlined principle of technical delay. I agree with Mr. Mwamboneke that the technical delay in the current application forms the bases of a reasonable and sufficient reason. In the same line the respondent argued that never informed the trial tribunal that they intended to appeal. With due respect, I think he did not understand the proceedings well. The trial tribunal after pronouncing the judgment pronounced simultaneously a right to appeal. In my view applicants had no duty inform it that they wished to appeal. After all, applicants' right to appeal is protected by the Constitution of the United Republic of Tanzania, 1977. This argument is weak to base denial of extension of time.

In the upshot, I am inclined to hold that the applicants have passed the legal test set for extension of time. consequently, application is granted. Costs to be in the cause.

It is so ruled.



DATED at **MBEYA** this 20th day of August, 2021

A handwritten signature in black ink, appearing to read "J. M. Karayemaha".

J. M. KARAYEMAHA

JUDGE