THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

MISC. LAND APPLICATION NO. 135 OF 2020
(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 118 of 2016)

CHARLES JACKSON.....1ST APPLICANT
GODFREY KAPUNGA.....2ND APPLICANT
TIMOTH FAYA.....3RD APPLICANT
CLEMENCE LAMECK.....4TH APPLICANT
JAPHET KATANI.....5TH APPLICANT

VERSUS

S. H. AMON ENTERPRISES CO. LTD.....RESPONDENT

RULING

Date of Last Order: 05/08/2021
Date of Ruling : 27/08/2021

MONGELLA, J.

The applicants are seeking for extension of time within which to lodge an appeal against the decision of the District Land and Housing Tribunal for Mbeya at Mbeya (the Tribunal) rendered in Land Application No. 118 of 2016. The application is brought under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 and supported by the affidavit of Sambwee Mwalyego Shitambala, the applicants' advocate. It was argued by written submissions.

In the affidavit in support of the application, as well as, in the written submission by Mr. Shitambala, one major reason for the delay was advanced. This is to the effect that there was delay in issuing copies of judgment and decree by the Tribunal. Mr. Shitambala submitted that the Tribunal rendered its judgment on 23rd October 2020 in favour of the respondent. On 26th October 2020, they filed notice of intention to appeal and requested for copies of proceedings, judgment and decree and served the notice to the respondent as well. He contended that the documents requested were not supplied to them until 15th December 2020, whereby they were already out of time prescribed for lodging appeals, hence this application.

Mr. Shitambala further contended that in filing an appeal, copies of judgment and decree are important documents to accompany the appeal. In support of this argument he referred the court to the case of ***Halfan Sudi v. Abieza Chichili*** [1998] TLR 257. In consideration of that, he argued that delay in supply of the said copies of judgment and decree amounts to sufficient cause. He added that the courts have always treated such reason as sufficient to warrant extension of time. To support his argument he referred to the case of ***District Executive Director, Kilwa District Council v. Bogeta Engineering Ltd.***, Civil Appeal No. 37 of 2017 (CAT, unreported) and that of ***Fatuma Mohamed v. Chausiku Selema***, Civil Appeal No. 225 of 2017 (CAT at Mwanza, unreported). He thus prayed for the application to be granted.

The respondent on the other hand was represented by Ms. Mary Gatuna, learned advocate. Ms. Gatuna vehemently opposed the application. She

posed one major ground that the applicants have not advanced sufficient reasons. Referring to section 19 (2) of the Law of Limitation Act, Cap 89 R.E. 2019, which directs that the period wasted in waiting copies of decree or order should be excluded from computation of time, she argued that by the time the applicants collected the copies of judgment and decree on 15th December 2020, they were within time. Referring to section 41 (2) of the Land Disputes Courts Act, which prescribes the time to lodge appeals to be 45 days, she argued that the applicants wasted time in filing the appeal by opting to file the application at hand. She further referred to the case of ***Alex Senkoro and 3 Others v. Eliambuya Lyimo***, Civil Appeal No. 16 of 2017 (CAT, unreported), which amplified on the application of section 19 (2) of the Law of Limitation Act.

Ms. Gatuna further challenged the application on the ground that the applicants have not accounted for delayed days between 15th December 2020 when they obtained copies of judgment and decree and 20th December 2020 when they filed the application at hand. Referring to the case of ***Robert Nyengela v. The Republic***, Criminal Application No. 42/13 of 2019, she argued that it is trite law that each day of the delay must be accounted for. She was of the stance that the applicants have failed to account for the delayed forty days they wasted in filing the appeal after obtaining copies of judgment. She further argued that the applicants have failed also to account for the five days from the date they obtained the copies of judgment and decree and the date the application at hand was filed in this court. Referring to the case of ***Ramadhani I. Kihwani v. TAZARA***, Civil Application No. 401/18 of 2018 (CAT, unreported), she insisted that a delay of even a single day has to be

accounted for. On these arguments she prayed for the application to be dismissed with costs.

In rejoinder, Mr. Shitambala banking on the provisions of section 41 (2) of the Land Disputes Courts Act, argued that the time starts to run from the date of the decision or order, which in the case at hand, was 23rd October 2020. Arguing on the application of section 19 (2) of the Law of Limitation Act, Mr. Shitambala contended that it has been decided by the courts on several occasions that the exclusion of time is not automatic, but with order of the court upon application for extension of time. In support of his argument he cited the case of ***Leah Mwamwezi v. John Mwansasu***, Misc. Land Appeal No. 27 of 2018 (HC at Mbeya, unreported). He concluded by insisting that the applicants have advanced sufficient reasons for this court to consider and grant the application.

I have considered the arguments by both counsels. It is settled law that extension of time lies in the discretion of the court which however has to be exercised judiciously by considering sufficient reasons advanced by the applicant. See: ***Barclays Bank Tanzania Limited v. Tanzania Pharmaceutical Industries & 3 Others***. Civil Application No. 62/16 of 2018 (CAT at DSM, unreported), in which the CAT while revisiting its previous decision in ***Alliance Insurance Corporation Limited v. Arusha Art Limited***, Civil Application No. 33 of 2015 (unreported) held:

> *"Extension of time is a matter for discretion of the court and that the applicant must put material before the court which*

will persuade it to exercise its discretion in favour of an extension of time."

From the above decision, the main issue to be considered by the court granting extension of time is the sufficient reason advanced by the applicant. As I mentioned before, the applicants' main reason for delay is delay in obtaining the copies of judgment and decree. I appreciate the arguments by Ms. Gatuna on the position of the law as provided under section 19 (2) of the Law of Limitation Act and also as settled in the various cases she cited to the effect that the time one spends in waiting for copies of judgment and decree has to be excluded in computing the time limit.

The Court of Appeal in the case of ***The Director of Public Prosecutions v. Mawazo Saliboko @ Shagi & 15 Others***, Criminal Appeal No. 384 of 2017 (CAT at Tabora, unreported) amplified on section 19 (2) of the Law of Limitation Act by ruling that the time one waits for issuance of the copies of judgment or proceedings has already been excluded under the law. The CAT in this case was discussing the application of section 379 (1) (b) of the Criminal Procedure Act, which is couched in similar terms as section 19 of the Law of Limitation Act. The position was further cemented in the case of ***Samuel Emmanuel Fulgence v. The Republic***, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported), by providing the exact time on which time is to start running. The Court ruled that time shall start to run on the date the copies of judgment and decree were ready for collection, that is, on the date certified by the court/tribunal on the said judgment or decree.

I have gone through the Tribunal record and found that copies of judgment and decree were certified on 11th December 2020. Thus they were ready for collection on 11th December 2020 and this is the time to be considered in computing the time and not 15th December 2020 when the applicants collected the copies. Considering the date of certification, that is, 11th December 2020, I agree with Ms. Gatuna that the applicants were within time to lodge their appeal. This is because the 45 days limitation prescribed under the law starts to run from this date as per section 19 (2) of the Law of Limitation Act and the various Court of Appeal decisions.

Mr. Shitambala argued that there are various decisions including the one he cited which ruled that the exclusion of time is not automatic. It is true that this position was once settled by the courts. However, the recent Court of Appeal decisions have settled the position that the time has to be excluded by counting from the date the copies were certified and there is no need of applying for the court to exclude the time. The CAT in fact has restated the position settled under section 19 (2) of the Law of Limitation Act. It follows therefore that the position settled by the CAT in these cases overrules the stand that has been taken by this Court, by some of the judges to the effect that a party still has to seek for extension of time where the delay emanates from waiting copies of judgment, decree and proceedings. Mr. Shitambala ought to have updated himself with the development of the law as settled by the Court of Appeal as cited hereinabove. By 15th December 2020 the applicants were within the prescribed time limitation.

Ms. Gatuna argued that the applicants ought to have accounted for each day of the delay, particularly the five days from the date they obtained the copies of judgment and decree. I am alive at the various decisions on the requirement to account for each day of the delay. See: ***Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania***, Civil Application No. 02 of 2010 (unreported), in which this requirement was provided by the CAT as one of the guidelines to be adhered to while considering what amounts to good cause. The Court listed other important guidelines being that: the delay should not be inordinate; the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and that if the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

In my considered view, by filing this application immediately after obtaining copies of judgment and decree, the applicants did not sleep on their right to pursue the appeal. They just invoked a wrong forum by seeking for extension of time while they were still within time. Replying to Ms. Gatuna's contention on accounting for the five days after obtaining the copies of judgment and decree, Mr. Shitambala contended that it is obvious that the five days were spent preparing the documents for lodging the application. I am hesitant to entertain this explanation as the same has been raised during rejoinder and was never stated in the supporting affidavit. It is thus a new fact.

However, on the other hand, in consideration of the fact that the applicants, while filing this application, were very much within time to appeal, I find it irrelevant to demand from them an account of the five days considered to be delayed by Ms. Gatuna. They were only misguided by their advocate to apply for extension of time instead of filing the appeal. Usually, the mistake of the counsel is taken to be the mistake of the party. However, in my view, each case has to be treated in consideration of its own merits. There are various decisions in which the courts have saved the parties from the mistakes of their advocates. See for instance, the case of ***Shah Hamraji Bharmal v. Santos/ii Kumar*** (1961) E. A. 679 in which it was ruled that mistake by advocate may be ignored to avoid punishing a client on the forgetfulness or mistake/default of counsel. See also: ***Charles Ngoloka v. Ponsian Mkwama***, Misc. Land Application No. 21 of 2014 (HC at Mbeya, unreported).

In consideration of the fact that the applicants were within time to file their appeal while filing this application, I find this being one of the matters in which the applicants should not be punished for the mistake by their counsel in advising them on the proper channel to be taken to pursue their appeal following being dissatisfied by the decision of the Tribunal. The application is therefore granted. The applicants are given 21 days from the date of this ruling to lodge their appeal in this court.

Dated at Mbeya on this 27th day of August 2021.

L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 27th day of August 2021 in the presence of the applicants and Ms. Edna Mwamlima, holding brief for Ms. Mary Gatuna, counsel for the respondent.

L. M. MONGELLA

JUDGE