

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

MISC. LAND APPLICATION NO. 21 OF 2021

*(Arising from decision of the District Land and Housing Tribunal for Mwanza in
Application No. 375 of 2016 dated 29th July, 2020)*

MORORO KISIRI CHACHA APPLICANT

VERSUS

JAMES RIOBA RESPONDENT

RULING

14th July, & 27th August, 2021

ISMAIL, J.

This application, brought by the applicant, is founded on the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019; section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019; and section 95 of the Civil Procedure Code, Cap. 33 R.E. 2019. The applicant is asking the Court to extend time within which he may file an appeal, against the decision of the District Land and Housing Tribunal, in Application No. 375 of 2016. The application is supported by an affidavit sworn by Mororo Kisiri Chacha, the

applicant himself. On the other side, the application is valiantly opposed by the respondent, through a counter-affidavit sworn by the respondent himself, imputing negligence on the part of the application. On the date of the hearing, the applicant appeared in person, unrepresented, while the respondent was represented by Ms. Lillian Lyimo, learned counsel.

At the commencement of the hearing, the applicant prayed to adopt the contents of his affidavit as part of his submissions. He argued that the delay in filing the appeal was caused by the delay in obtaining a copy of the ruling which was delivered to him after 90 days. This is in spite of preferring a letter of request for copies of the decree and judgment on 30th July, 2020, a day after the pronouncement of the said decision. The applicant further argued that his application was submitted on line but it met some technical challenges. He prayed that the same be granted as prayed as the delay was due to sufficient cause.

Ms. Lyimo began by praying to adopt the applicant's counter-affidavit as part of her submission. Rebutting the applicant's submission, the learned counsel argued that there is no evidence that efforts were employed in following up the letter which requested for copies of the judgment and decree. She claimed that the applicant did nothing for four months and 25 days, which is quite a long time. Furthermore, the counsel argued that the

decision is not certified to show that it was issued on the date that the applicant alleges it was issued *i.e.* 25th November, 2020.

With respect to enlisting the assistance of a lawyer, Ms. Lyimo contended that there is no evidence, by way of affidavit or otherwise, to that effect. She also argued that there is no evidence that she requested a copy of the decree or that the same was issued on 30th November, 2020, as the same is not certified. With regards to filing the application through JSDS system, the counsel argued that this allegation is not evidenced, as there is none, as well, that the applicant was given a control number, or that he went to see the Deputy Registrar to that effect. She argued that the delay after the first filing was two months. On the applicant's financial problems and inability to raise the filing fees, the counsel argued that this contention is not evidenced.

Overall, the counsel argued that the applicant has not adduced sufficient cause to justify the prayer for extension of time, and that he has failed to account for each day of delay, consistent with the decision in ***Jacob Shija v. M/S Regent Food & Drinks Limited & Another***, CAT-Civil Application No. 440/08 of 2017 (unreported). She prayed that the application be dismissed with costs.

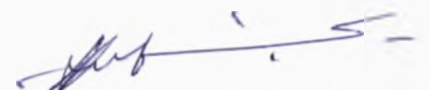


In rejoinder, the applicant reiterated what was stated in submission in chief. He maintained that the delay was not caused by any form of negligence. He insisted that he requested for the copy of the judgment early enough.

Having considered the parties' brief submissions, the issue for determination is whether the applicant has demonstrated a sufficient cause justifying the delay.

As stated, time and again, the Court's power to extend time is discretionary, exercised judicially. Such discretion requires the Court to make logically sound decisions based on rules of law. This was position was encapsulated in the case of ***Nicholaus Mwaipyana v. The Registered Trustees of Little Sisters of Jesus of Tanzania***, CAT-Civil Application No. 535/8 of 2019 (unreported), in which it was held:

"The power to extend time given under this provision is discretionary, but such discretion must be exercised judicially, meaning the making of a logically sound decision based on rules of the law. That requires the attention of the court to all the relevant factors and materials surrounding any particular case. These factors include the length of the delay, the reason for the delay, and whether or not there is an arguable case, among others."



The reasoning in the quoted excerpt traces its validity from the decision passed by the defunct East African Court of Appeal in ***Mbogo v. Shah*** [1968] EA 93, in which it was held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

The applicant's quest for extension of time is premised on the delay in securing a copy of the decision sought to be impugned; and failure to raise funds requisite for paying court fees. With respect to the former, the respondent's contention is, *inter alia*, that the decision is not certified to indicate the date on which the certified copy was extracted and/or issued. While the established position is that delay in procuring a copy of the decision, after it had been duly requested, constitutes sufficient ground for enlargement of time, the responsibility on the part of the applicant starts to run from the date it is shown that such decision was supplied to him. This can be ascertained by looking at the date of certification of the said order. This would mean that the same was ready for collection. Absence of such date, as it is the case here, complicates matters and brings uncertainty, if not difficulty, in gauging the timeliness of the actions done by the applicant

subsequent to receipt of the said decision. It is for this reason that I subscribe to Ms. Lyimo's thinking and hold that absence of such date diluted the strength of this ground.

But even assuming that this ground was sufficient and tacky enough, I would still hold that it would only take care of the lost time from the date of pronouncement of the decision to the date on which a copy was furnished, up until the expiry of the forty five day period set for preferring appeals to this Court. There is still a lapse of more than 25 days to the date of the filing of this application

The applicant has stated as to how he enlisted the assistance of various people, including the Deputy Registrar of the Court who directed him to source the service of an advocate who would help him file an application through the system. As Ms. Lyimo rightly argued, this account of fact has not been evidenced. This is against the trite position which is to the effect that, where a party relies on the information given by a third person, then an affidavit of that person should be sworn and attached to the application. This is in line with the reasoning in number of decisions, including ***John Chuwa v. Anthony Ciza*** [1992] TLR 233; and ***Nyabazere Gora v. Charles Buya***, CAT-Civil Appeal No. 164 of 2016 (unreported); and ***Zuberi Nassor Mohd v. Mkurugenzi Mkuu Shirika la Bandari Zanzibar***, CAT-

Civil Application No. 93/15 of 2018 (unreported). In all of the decisions the need to swear or affirm an affidavit to substantiate the allegation was underscored. In the latter case, the Court of Appeal observed (at pp. 11-12) as follows:

"Besides that, the applicant's account that he had to find a court clerk to supply him with another set of documents is not supported by any evidence. Indeed, as was correctly argued by Mr. Rajab, the applicant did not mention even the name of the said clerk. Neither did the said court clerk swear/affirm an affidavit to substantiate his allegation."

In the absence of any semblance evidence to substantiate the applicant's averments in the supporting affidavit, the contention regarding the steps he took with his advocate and the directives given by the Deputy Registrar is nothing better than a mere statement which cannot be relied upon.

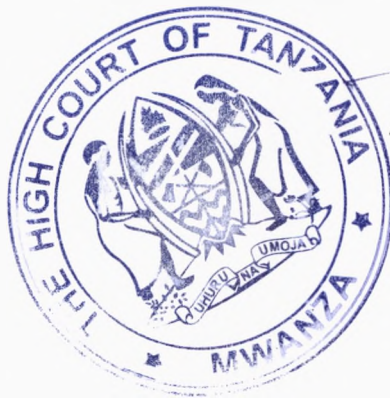
There is also a contention that after obtaining a control number, the applicant retreated for seventy (70) days, mobilizing filing fees. This contention has raised a serious question that begs an answer. Why would he want to get a control number if he did not have funds from which the filing fees would be paid? The quantum to be paid would be enquired from the registry officer of the Court without having to request a control number,

only to effect the payment on 2nd March, 2021. This, in my considered view, is a manifestation of the applicant's lack of diligence, and I am not persuaded that this constitutes a sufficient reason for extension of time. It is an effort to circumvent the requirement of the law that demands that the applicant should account for each day of delay (See: ***Bariki Israel v. Republic***, CAT-Criminal Appeal No. 4 of 2011 (unreported)).

In the upshot, it is my conclusion that the applicant has not demonstrated any good cause that would entitle him the craved extension of time. In consequence, this application fails and it is hereby dismissed with costs.

It is so ordered.

DATED at **MWANZA** this 27th day of August, 2021.




M.K. ISMAIL
JUDGE