

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

MISC. LAND APPLICATION1 NO. 56 OF 2020

(Arising from Shinyanga District Land and housing tribunal in land application No. 15 of 2017)

MOSES SENI.....APPLICANT

VERSUS

SENI MASHILINGI.....

PIUS MIPAWA.....

KUMALIJA SENI.....

RESPONDENT

RULING

16th & 20th August, 2021

MKWIZU,J

This is an application for extension of time for filing an appeal against the judgment and decree of the District Land and Housing Tribunal for Shinyanga in Land application No. 15 of 2017. The application is made under section 41 (2) proviso to the Land Disputes Court's Act (Cap 216 R.E 2019). It is supported by the affidavit taken by the applicant, Moses Seni. The key ground for the delay is found in paragraph 6,7 and 8 of the affidavits that is, the delay in being supplied to him a decree for appealing purposes.

The applicant is opposed by the respondents. In the Counter affidavit taken out by Pius Mipawa, the respondent's reaction to the applicant's affidavit is that, no proof that applicant made any follows of the copies of the judgment and the decree. Applicant relaxed until expiration of the time for filing the appeal.

At the hearing, Mr. Audax Constantine represented the applicant while respondents were in person, unrepresented. Mr. Audax's submissions were a repetition of what is contained in the applicant's affidavit particularly on the reasons for the delay. He stressed that applicant delayed while waiting to be supplied with the copy of the impugned judgement and decree.

I have passionately evaluated the application. The decision which is sought to be appealed against was handed down on 28/5/2020. On what transpired thereon, paragraph 3, 4, 5,6 ,7 and 8 of the affidavits in support of the application are of relevance. The applicant deposed that, he was served with the copy of judgement on 18/9/2020 and the decree was served upon his advocate on 28/9/2020 followed by the filing of this application on 30/9/2020.

I understand and that the application is opposed on the ground that the period of the delay is not accounted for and that there is no proof on the follow-ups made by the applicant towards obtaining the requisite documents for appealing purposes.

It should be noted here that, whether to grant or not an application for extension of time is the discretion of court though such a discretion must be exercised judiciously. The duty of the applicant is to show sufficient cause which impeded him to appeal on time.

The sole reason for the delay is the delay to be supplied with the copies decree and judgment. Section 19 (2) of the Law of Limitation act allows exclusion in computing for the period of limitation of days within which the applicant was awaiting to be supplied with the copies of a decree. Section 19 (2) of the Law of Limitation Act (Cap 89 Revised Edition 2019) provides:

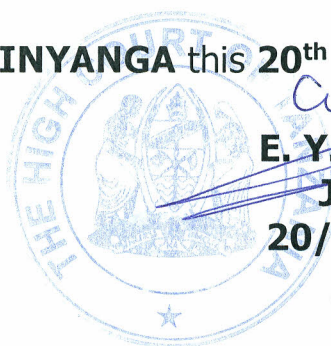
"(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal or an application for review of judgment complained of was delivered, the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed shall be excluded.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

The applicant in the present application was supposed to appeal within 45 days from 28/5/2020. But the decree was supplied to him on 28/9/2020. According to the provisions of section 19 (2) cited above, the period between 28/05/2020 and 28/09/2020 when the appellant obtained a copy of decree is excluded in computation of the time for appealing purposes.

That being the position, the application for extension of time filed two days there later that is on 30/9/2020 was filed without delay. The applicant has managed to sufficiently account for the delay. The application is therefore granted. The intended appeal to be filed within 45 (forty-five) days from the date of this ruling. No order as to costs.

Order accordingly.

DATED at SHINYANGA this 20th day of August, 2021



E. Y. Mkwizu
E. Y. MKWIZU

JUDGE

20/08/2021