

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CIVIL APPLICATION NO. 77 OF 2020

(Originating from District Land and Housing Tribunal for Manyara at Babati in
Application No. 20 of 2016)

LUCIAN GERMANAPPLICANT

VERSUS

BOMBO GEO.....RESPONDENT

RULING

24/9/2021 & 12/11/2021

ROBERT, J:-

The applicant, Lucian German, seek to be granted extension of time to file an appeal out of time. The application is brought under section 41 (2) of the Land Disputes Courts Act, Cap. 216 (R.E 2019) and supported by an affidavit sworn by the applicant.

The respondent filed his counter-affidavit to resist the application but lost interest in the course of this matter and failed to enter

appearance. Hence, the applicant prayed successfully to proceed with the hearing ex-parte. The applicant was represented by Mr. E.F Mbishe, learned counsel at the hearing of this application.

Submitting in support of this application, Mr. Mbishe informed the court that, the impugned judgment was delivered on 10/6/2020 and on 12/6/2020 the applicant requested for copies of documents which he received on 20/7/2020. He maintained that there was no negligence on the part of the applicant since he requested for the copies within the time.

He submitted further that, time to institute an appeal starts to run on the date the applicant received requested copies for purposes of appeal. Therefore, he maintained that the time used to request and obtain copies of judgment should be excluded in computing time limitation for purposes of appeal. To support his argument, he cited the case of **Finn Von Wurden Petersen and Another vs Arusha District Council**, Civil Application No. 562/17 of 2017, CAT at Arusha (unreported)) and section 19 (2) of the Law of Limitation Act, Cap. 89 (R.E 2019).

He submitted that, in the case of *Margwe Eroand 2 others vs Moshi Bahalulu*, Land Appeal No. 39/2009 at page 4, 3rd paragraph the Court held that:-

"enlargement of time can only be sought in a requisite application as the court cannot in an appeal automatically exclude the time used to obtain copies of judgment and decree"

He argued further that, the competence of the proceedings at the trial court can be raised at any time (See Hassan Ali Sandali vs Asha Ally, Civil Appeal No. 246/2019, CAT at page 9). He maintained that, in the present case the applicant bought disputed land from one Baraza Geo and Domiano Geo and they were not made parties to the main suit the act which vitiated the entire proceedings as indicated in the case of **Juma Kadala vs Laurent Mgande** (1983) TLR 103. He noted that, the said illegality can be raised at any time which makes it a good ground for extension of time. He prayed for the application to be allowed with costs.

I am well aware that, to grant prayers for extension of time the court must be satisfied that sufficient cause for the delay has been well established by the applicant. Having heard submissions by the applicant and examined the documents attached in support of this application, I agree with the applicant that the delay to file an appeal was partly caused by late supply of the copy of Judgment and decree which were received on 20/7/2020. However, this application was filed on 3rd August, 2020. It is trite law that, in cases of delay to file an appeal within the prescribed time the applicant needs to account for each day of delay (**see Karibu**

Textiles Mills Limited vs Commissioner General Tanzania


Revenue Authority (Civil reference No. 21 of 2017) [2021] TZCA 261;

(10 June 2021) (TANZLII)). In the present case, the applicant's affidavit and submissions are silent on what happened from the date of receipt of the copy of judgment to the date of filing this application. That is to say, even if this court will decide to exclude the time used to obtain the copy of judgment and decree still the applicant has not accounted for 13 days from 2/7/2020 up to 3/8/2020 when this application was filed.

On the basis of the foregoing, this court finds that the applicant failed to adduce sufficient reasons for the delay and proceed to dismiss this application for lack of merit.

It is so ordered.




K.N. ROBERT
JUDGE
12/11/2021