

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

(IN THE DISTRICT REGISTRY OF TANGA)

AT TANGA

MISC. LAND APPLICATION NO. 15 OF 2021

(Arising from Land Case No. 23 of 2019 of High Court of Tanzania at Tanga; Originating from Land Application No. 16 of 2015 Korogwe District Land and Housing Tribunal at Korogwe)

THE REGISTERED TRUSTEED OF

ROCK MEMORIAL EDUCATION TRUST.....APPLICANT

-VERSUS-

MARTIN SHENYAGWA (As the Administrator of the last late HILDA MARKO SHENYAGWA)RESPONDENT

RULING

Date of last order: 29/09/2021

Date of Ruling: 11/10/2021

AGATHO, J.:

The Applicant in the present application applies for extension time to file an appeal against the judgment and decree of Korogwe District Land and Housing Tribunal in Land Application No.16 of 2015 delivered on 24/09/2019 and certified on 12/11/2019. The application was taken at the instance of Divine Chambers Advocate and was supported by the affidavit of the Applicant's Counsel one Philemon Raulencio. The Respondent resisted the application by way of Counter Affidavit deposed by the Applicant's Counsel Mathias Nkingwa.

When the application was set for hearing the parties' Advocates appeared and made their submission basing on the Affidavits. But the

main issue before this Court is whether the application should be granted? Whether the Applicant has shown sufficient cause to persuade the Court to exercise its discretion to extend time. Moreover, whether the Applicant has managed to account each day of the delay.

To begin with a brief background, the application was brought under Section 41(2) of Land Dispute Courts Act [CAP 216 R.E. 2019]. According to the Applicant this provision empowers the High Court to extend time to file an appeal against the decision of District Land and Housing Tribunal. In the present case application was preferred against the District Land and Housing Tribunal of Korogwe, in Land Application No. 16 of 2015 delivered on 24/9/2019. The copies of judgment and decree were certified on 12/11/2019. The Applicant was represented by Noelina Bippa Advocate, who prayed to adopt the Affidavit sworn by Advocate Philemon Raulencio.

In her submission she started by stating that before the Court grant extension of time the Applicant must show sufficient cause and account for each day delayed, and the delay in this case as averred in paragraph two and seven of the Affidavit. The delay to be accounted is from 24/09/2019 when the judgment was delivered to 23/4/2021 when this application was filed which makes total of 575 days. As for the sufficient cause is only one, which is a technical delay, which means that

the Applicant was not supplied with copies of judgment and decree in Land Application No. 16 of 2015 in time. Again, he was not supplied with copies ruling and order in Land Case Appeal No. 23 of 2019 before this court. Which struck out the appeal. The ruling was delivered on 01/07/2020.

The Applicant's Counsel went on accounting for the days delayed. She submitted that the appeal that they intend to appeal against was delivered on 24/09/2019. Immediately after two days, they applied for copies of judgment and decree so that they could appeal. The letter for applying the same was annexed as annexure R-1 collectively. She added that although they applied for the judgment early, they were supplied with it on 12/11/2019. This is 40 days later after the date of the judgment. After getting the copies of the judgment they filed their appeal on 23/11/2019, which is 11 days after the day they were supplied with judgment. It was their argument that they filed the appeal believing that it was timely under Section 19 (2) of the Law of Limitation Act [Cap 89 R.E. 2019]. This provision states that the time one spends waiting for judgment and decree is excluded in counting the delayed days. This is supported by the decision of the Court of Appeal between **Alex Senkoro and 3 Others v Eliambuya Lyimo (as administrator of the estate of Frederick Lyimo, deceased), Civil Appeal No. 16**

of 2017 CAT at pp. 12-13. The Court of Appeal of Tanzania held that the time one spent in following up for the judgment for appeal that time is automatically excluded under section 19 (2) of Law of Limitation Act. Thus, the time for limitation starts to run when one is supplied with copy of judgment. For the Applicant time started to run against them from 12/11/2019. The Applicant Counsel cited Mruma J, in **Land Appeal No. 23 of 2019** (between the same parties in the present application), in which he was of the view that the reason (time spent waiting for the copy of the judgment) is sufficient cause but it should be used to apply for extension of time. And consequently, he struck out the appeal on 01/07/2020.

Again, when that decision in **Land Appeal No. 23 of 2019** was made the judgment of **Alex Senkoro's case** was not yet pronounced. The life span of the appeal in **Land Appeal No. 23 of 2019** before this Court was 221 days. The Applicant's counsel correctly submitted that this was a technical delay as it was stated in **Fortunatus Masha v Willaim Shija and Others [1997] TLR 154**, it was also adopted in the Court of Appeal of Tanzania decision in **Hamisi Mohamed (as the Administrator of the Estates of the late Risasi Ngawe) v Mtumwa Moshi (as Administratrix of the Estates of the Moshi Abdallah), Civil Application 407/17 of 2017 CAT at Dar es**

salaam at pages 7-8 pronounced in 10 and 21 February 2020. The Applicant took a wrong course, and this was held to be excusable by the Court of Appeal of Tanzania. In the Applicant's case he was supposed to apply for leave to file the appeal out of time.

Regarding taking wrong course it was held in the case of **Elibariki Asseri Nnko v Shifaya Mushi and Aliwanga Kinando [1998] TLR 81**, that is excusable. The delay of 221 days was spent in the Court, while taking a wrong a course.

The next period that which the Applicant's counsel accounted for, is the period when the appeal was struck out. That is, from 1/7/2020 when Land Appeal No. 23 of 2019 was struck out to 13/4/2021 when the ruling and order was supplied to the Applicant. This is the delay of 286 days. Looking at the Affidavit on paragraph 4 and 5, which shows that after the ruling was delivered on 01/07/2020, and on 08/07/2020 the Applicant wrote a letter requesting copy of the ruling. Moreover, he avers that he has been making a follow up to the Court, and the copy of ruling was supplied on 13/04/2021. These are annexture R-1 collectively, containing copy of the ruling of Land Appeal No. 23. The ruling on page 3 has Court stamp which shows when it was delivered, and date of application of the copy (08/07/2020) as well as the date the copy was supplied, that is 13/04/2021.

Submitting further on the ruling, the Applicant's Counsel argued that the ruling was important because they wanted to know what cause of action they should take. The ruling stated the appeal was out of time and it was thus confusing. It was her submission that the whole of that time they were waiting for that copy of the ruling. To support their argument, she referred the Court to the case of **Registered Trustee of the Marian Faith Healing Centre@Wanamaombi v The Registered Trustees of the Catholic Church Sumbawanga Diocese, Civil Appeal No. 64 of 2006 CAT at page 15-16**, the Court of Appeal of Tanzania upheld the wisdom of Makame JA in **Transcontinental Forwarders Ltd v Tanganyika Motors Ltd [1997] TLR 328**, after applying for certified copies of above documents on 02/05/2003 the Appellant were home and dry.

The learned counsel argued further that from 13/04/2021 when they got copy of ruling to 23/4/2021 when we filed this application before this Court there are about 10 days. These 10 days delayed were reasonable and diligent. As it was held by the Hight Court at Tanga **William Joseph v Augustino Chikonde, Land Application No. 4 of 2014, at page 4** the Hight Court held that the 9 days delay was held to be sufficient cause and diligent of the applicant and hence time was extended. In the case of **Hamisi Mohamed (as Administrator of the**

estates of the Risasi Ngawe) [supra] 30 days delay was held to be reasonable and diligent, and extension of time was granted. The learned Counsel submitted that under paragraph 7 of the Affidavit averment as to the delay and also that these days the JSDS dashboard can show when application was filed, and control number issued and then the case is admitted.

The Applicant's Counsel referred the Court to the case of **D.N. Bahram Logistics Ltd and other v National Bank of Commerce Ltd and other, Civil Reference No. 10 of 2017 CAT at page 2** where the Court held that if the said appeal was struck out for the delay, then the said period must be accounted for. The Counsel conceded that it is true the appeal was struck out and as they have demonstrated here in above there is sufficient cause, and the delay was partially technical one Mr. Mathias Nkingwa, learned counsel for the respondent on his part opposed the application, he began by adopting his Counter Affidavit to be part of my submissions. It was his submission that the law is very clear especially the Land Disputes Courts Act Cap 216 R.E. 2019 Section 41(2). The appeal may be filed within 45 days after the date of the decision or order. He argued that the record shows that the Application No. 16 of 2015 at the District Land and Housing Tribunal Korogwe, the judgment was delivered on 24/09/2019. 45 days lapsed on 09/11/2019.

For that reason, the CAP 216 does not state anywhere that one has to file an appeal after getting a copy of judgment and decree. But with due respect, this Court is of the view that one cannot file any intelligible appeal without reading the judgment against which the appeal is preferred. For that reason, the Applicant has sufficient cause for him to delay filing the appeal in 575 days. I also find the laws cited by the Applicant Counsel to be relevant. It is just for this Court to exercise discretion under Section 41(2) CAP 216 to extend time for the Applicant to file his appeal.

I have noticed the Respondent Counsel complaining on the Applicant's Counsel tendency of submitting in general that when the Applicant filed Appeal No. 23 of 2019 before this honourable Court. She has also submitted in general relying on Section 19 (2) of Law Limitations Act, CAP 89 R.E 2019 which the Respondent's Counsel suggested to be equally irrelevant. Moreover, the Applicant's Counsel has submitted since 01/07/2020 the date when the Land Appeal 23 of 2019 was struck out up to 23/04/2021 when they brought this application. The Respondent's advocate complained that Counsel for the Applicant has failed to explain why they did not file appeal within. Instead, she gave stories. The Counsel for Respondent submitted that there are case laws that require the Applicant to account for each day of

delay what was he doing. It was held in **Ramadhani J. Kihwani v TAZARA, Civil Application No. 401/18 of 2018 Court of Appeal of Tanzania at page 9**

"...That day/of even a single day has to be accounted for otherwise there will be no point of having rules prescribing period within which certain steps have to be taken..."

Mr. Nkingwa argued that what has the Applicant counsel done is to give us stories instead of telling the court what the applicant was doing for those 575 of delays. The Applicant since at the District Land and Housing Tribunal was enjoying the services of Divine Law Chambers.

I would like to differ with Mr. Nkingwa's arguments, firstly **Kihwani v TAZARA** case is distinguished from application at hand. On pages 2-3 shows what transpired in **Kihwani's case**. In that case the Applicant was following up Legal and Human Rights Center lawyer for four months. This is quite distinct from that case. They could not have gone to another Court and seek copy of judgement.

With regards to claim that they have submitted generally. This is not true. The Applicant have explained what we were doing for the entire period of 575. There was delay getting copy of judgment of District Land and Housing Tribunal, there was delay to get copy of the

ruling at the High Court. The Applicant also stated that he took a wrong course filing an appeal without seeking extension of time. As submitted by the Applicant's Counsel, I find these to be sufficient cause.

Regarding the Respondent's Counter Affidavit, it does not aver that the Applicant delayed negligently because he had been given a copy ruling or judgment much earlier. It is the law that the matter of fact stated in the Affidavit must be contravened by facts in the Counter Affidavit. Putting the Applicant to strict proof amounts to admission as it was stated in the case of **East Africa Cables Ltd v Spenco Service Ltd, Misc. Application No. 61 of 2016, High Court Commercial Division at Dar es Salaam.**

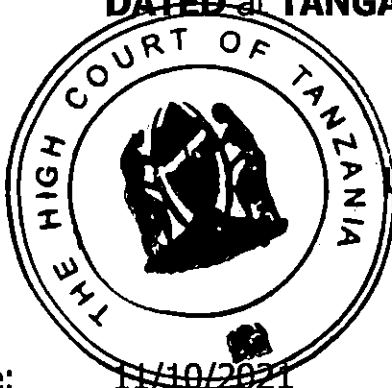
I have also observed that the Respondent's Counsel contended that the Applicant's Counsel misapplied Section 19 (2) of Law of Limitation Act. I concur with the Applicant's Counsel that this provision is relevant. It is used to show exclusion of time for the time the Applicant was waiting for copies of judgment, ruling or orders.


Turning to section 41 (2) of the Land Dispute Courts Act, Indeed, the Section does not require attachment of judgment/ruling to the memorandum appeal. But as it was held **Adinani M.R. Komolo v Juma Said Malusu, Misc. Land Case Appeal No. 1 of 2020 High Court of Tanzania at Dodoma** even though the attachment of

judgment is not a requirement but how could the Appellant compose an appeal without reading the judgment and records of proceedings? In the foregoing case the Court consequently struck out the preliminary objection on lapse of time and used Section 19 (1) of the Law of Limitation Act to exclude days that he was waiting for the copy of judgment.

For the reasons stated here in above the Applicant has shown sufficient cause and accounted for days delayed. I proceed to grant the Applicant extension of time for 14 days from the date of this Ruling to file their appeal. Given the nature of the application no order for costs is given.

DATED at TANGA this 11th Day of October, 2021.




U. J. AGATHO
JUDGE
11/10/2021

Date: 11/10/2021

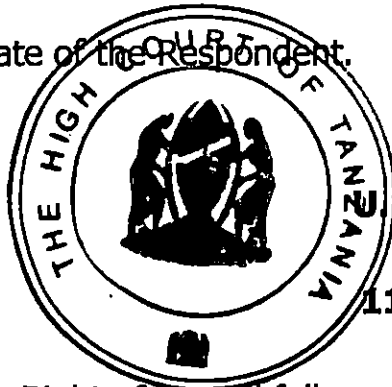
Coram: Hon. U. J. Agatho, J

Applicant: Noelina Bippa (Advocate)

Respondent: Mathias Nkingwa (Advocate)

C/C: Zayumba

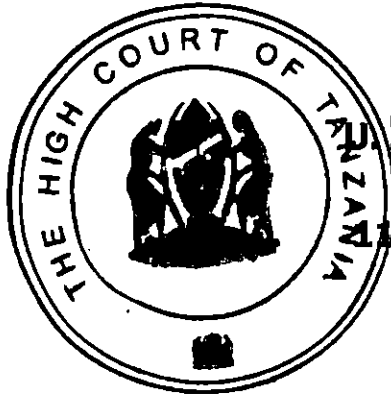
Court: Ruling delivered on this 11th day of October, 2021 in the presence of Noelina Bippa the Applicant counsel, and Mathias Nkingwa Advocate of the Respondent.





J. AGATHO
JUDGE
11/10/2021

Court: Right of Appeal fully explained.





J. AGATHO
JUDGE
11/10/2021

