

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA

MISC. LAND APPLICATION N. 43 OF 2021

*(Originating from the District Land and Housing Tribunal for Mbeya in Application
No. 38 of 2018)*

Between

PARTSON SHUNGU APPLICANT

VERSUS

CASTONE JIMSON1ST RESPONDENT

GOD CHRISTOPHER MPANGALA2ND RESPONDENT

TUMAIN MPANGALA3RD RESPONDENT

MUNYA MBUYA4TH RESPONDENT

RULING

30 March & 27 May 2022

NGUNYALE J.

In this application, the applicant is seeking extension of time within which to lodge an appeal against the judgment and decree of the District Land and Housing Tribunal in Application No. 38 of 2018. The Court is moved under section 41(2) of the Land Disputes Courts Act [Cap 216 R: E 2019]. The application is supported by an affidavit dully sworn by the applicant. The respondent did not file counter affidavit.

Briefly, the applicant has alleged that he was the applicant in Land Application No. 38 of 2018 in the District Land and Housing Tribunal for Mbeya in which judgment was given in favour of the respondents on 30/9/2019. Aggrieved he wrote a letter which was received by the Tribunal on 01/10/2019 requesting copies of judgment, proceedings and decree for purpose of appeal. On 22/10/2019 wrote a reminder letter and was told the file is missing. Then he wrote a complaint letter to the Deputy Registrar and the Registrar wrote two letters to the Chairman to make follow up on the file but were never responded to. He attributed the delay to file the appeal being the Tribunal not supplying the judgment and decree in time.

When the application was called on for hearing the applicant appeared in person, with no legal representation while the respondent did not enter appearance after being served with summons hence, I ordered to proceed *ex-parte* against them.

In his submission the applicant submitted that the Court has discretion to enlarge time upon sufficient reason being shown. He cited the case of **Praygod Mbaga v The Government of Kenya & Hon. Attorney of Tanzania**, Civil Reference No. 4 of 2019. He contended that the delay was not out of his negligence but as shown in the affidavit the

Tribunal delayed to supply him copies of judgment and decree which are necessary documents for lodging an appeal to this Court.

He continued to submit that on the same date the judgment was pronounced he wrote a letter requesting to be supplied with copies of judgment and decree. However, he did not obtain it in time despite making frequent follow up. The appellant continued to argue that although section 41(1) of the Land Disputes Courts Act [Cap. 216 R: E 2019] requires appeal to this Court to be lodged within forty-five days, under subsection (2) of section 41 the Court can extend time.

The appellant submitted further that section 41(2) (*supra*) should be read *in tandem* with section 19(2) of the Law of Limitation Act [Cap 89 R: E 2019] which provided time used for obtaining copies of judgment to be excluded. He supported the argument by the case of **Mary Kimaro v Khalfani Mohamed** [1995] TLR 202.

The appellant contended that he obtained the copies on 27th May 2021 after extensive follow up and on 12th June, 2021 he filed this application which was within forty-five days after obtaining the copies. He added that the exclusion of time is not automatic under section 19(2) of the Law of Limitation Act hence this application. To bolster the stance, he cited the case of **Sospeter Lulenge v Republic**, Criminal Appeal NO. 108 OF 2005. The appellant concluded his submission that under order

XXXIX Rule1(1) of the Civil Procedure Code [Cap. 33 R: E 2019] decree and judgment are necessary documents to accompany memorandum of appeal. Hence, no appeal could be made without the said documents.

I have passionately considered the application documents and written submission of the appellant. Notwithstanding the fact that the application is not opposed, the issue for determination is whether the appellant has advanced sufficient reason to be granted extension of time.

The power of the Court to enlarge time is both wide and discretionary. The Court can only do so upon good cause being shown as stipulated under section 41(2) of the Land Disputes Courts Act [Ca 216 R: E 2019]. As to what amounts to good cause, it was held by the Court in **Os ward Masatu Mwizarubi vs, Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) that;

'What constitutes good cause cannot be laid down by any had and fast rules. The term good cause is a relative one and is dependent upon the party seeking extension o f time to provide the relevant material in order to move the Court to exercise its discretion. While it is not possible to lay down an invariable or constant definition of good cause so as to guide the exercise of the Court's discretion in this regard, the Court must consider the merits or otherwise of the excuse cited by the applicant for failing to meet the limitation period prescribed for taking the4 required step or action.'

In determining whether good cause has been shown, regard should also be given to whether the application for extension of time has been filed promptly and also whether the applicant acted diligently.

The main reason advanced by the applicant is that the Tribunal delayed to supply him the judgment and decree which are necessary documents to be accompanied with the memorandum of appeal under order XXXIX Rule 1(1) of the Civil Procedure Code[Cap 33 R: E 2019]. Under paragraph 4, 5 and 6 of the affidavit the applicant has disclosed that he wrote a letter to the Tribunal requesting copies of judgment and decree. Upon making follow he complained to the Deputy Registrar but still got no reply from the Tribunal. The said letters were annexed to the affidavit.

As it stands now in this country it is the law that when a person has requested to the Court in writing to be supplied with copies of documents, he/she owe no obligation to make frequent reminder and follow up for the necessary document for appeal. I find support in the case of **Registered Trustees of the Marian Faith Healing Center @ Wanamaombi**, Civil Appeal No. 64 of 2007, CAT at Dar es Salaam and **Tanzania China Friendship Textile Co. Ltd versus Charles Kabweza & Others**, Civil Application No. 62 of 2015, CAT at Dar es

Salaam (both unreported). In **Tanzania China Friendship Textile Co.**

Ltd the Court held that;

'Despite that delay, there is no evidence that the applicant, who applied for inter alia a copy of that order for appeal purpose, was informed that the copy was ready for collection. The Court had the duty of notifying the applicant that the copy was ready for collection. Since that was not done, it would be unjust to condemn the applicant for the delay in collecting the document.'

In his application there is enough evidence that the applicant applied for copies of proceedings, judgment and decree through a letter dated 30/9/2019 which was received in the Tribunal on 01/10/2019. Also, there is evidence that the applicant complained to the Deputy Registrar against the chairman for not being availed with the documents, this is via Deputy Registrar's letters dated 11 November, 2020 and 31/03/2020. Unfortunately, there is no evidence that the applicant's and Deputy Registrar letters were replied.

In his submission the applicant submitted that he was supplied with the copies of judgment and decree on 27/5/2021 and on 12/6/2021 filed the instant application. I have perused the records and found nothing suggesting that the applicant was notified by the Tribunal to go and collect the requested documents. On the premises, the applicant's allegation remains uncontroverted.

The appellant argued that extension of time is not automatic under section 19(2) of the Law of Limitation Act [Cap 89 R: E 2019]. This argument is misconceived, the only condition under section 19(2) above is proof of written letter requesting the documents. The case of **Valerie Mcgivern v Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019, CAT at Tanga(Unreported) section 19(2) of the Law of Limitation Act reinforce the principle that computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced, the appellant obtains a copy of the decree or order appealed by excluding the time spent in obtaining such decree or order. The Court then held that;

'However, it must be understood that section 19(2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of an appeal.'


In this application there is proof that the applicant wrote a letter to the Tribunal on 30/9/2019 requesting copies judgment, proceedings and decree. There is no proof that the applicant was notified to go and collect the same by the Tribunal. This implies that the date on which the applicant went to collect the said documents on his own in the course of making follow up is the date of recording the limitation period. Given the above the applicant was supposed to file the appeal without unnecessary making this application. See the case of **Alex Senkoro & 3 Others v Eliambuya**

Lyimo (As Administrator of the Estate of Frederick Lyimo, Deceased), Civil Appeal No. 16 of 2017, CAT at Dar es Salaam (Unreported) where the Court stated;

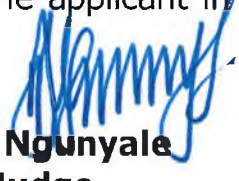
'We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the Court in a formal application for extension of time.'

In the end, I am satisfied that the applicant has demonstrated good and sufficient cause for his failure to file the appeal in time. The application is granted and the applicant is given thirty (30) days to lodge the appeal to this Court against the judgment and decree of the Tribunal in Application No. 38 of 2018. No order as to costs as the application was heard *ex-parte*.

DATED at MBEYA this 27th Day of May, 2022


D. P. Ngunyale
Judge
27/05/2022

Ruling delivered in presence of the applicant in person this 27th day of May, 2022.


D. P. Ngunyale
Judge
27/05/2022