

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MOSHI  
AT MOSHI**

**MISCELLANEOUS LAND APPLICATION NO. 6 OF 2022**

*(C/F Applicant No. 39 of 2021 District Land and Housing Tribunal at Moshi)*

**ABDILLAH IBRAHIM ..... APPLICANT**

**VERSUS**

**HUSSEIN BAKARI MSHANA ..... RESPONDENT**

*19/5/2022 & 31/5/2022*

**RULING**

**MWENEMPAZI, J:**

The applicant has filed this application under the provisions of Section 41(2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 praying for an order for extension of time to file an appeal out of time against the judgment delivered on 6<sup>th</sup> December, 2021 by the District Land and Housing Tribunal of Moshi before Hon. J. Silas in the application No. 81 of 2014, costs of application and any other relief this honourable court may deem fit and just to grant.

The application is supported by an affidavit of Abdillah Ibrahim, in it he has deposed that he is the owner of the dispute land measuring 22 paces and he has been residing on the land since 1972. The Ruling sought to be impugned was delivered on 6<sup>th</sup> December, 2021. He delayed to file an appeal against the Ruling because he received the copies late in January, 26<sup>th</sup> 2022 while he had applied for the same on 13<sup>th</sup> December, 2021.



The Respondent is opposing the application and he has filed a counter affidavit to state the grounds of his opposition. By virtue of paragraph 8, 9 and 10 the respondent has stated that the blame to delay due to late supply of the copies of judgment and judgement is unfounded as the documents, judgment and decree were certified, availed to the parties and were ready for collection since 18/01/2022. The applicant was thus not prevented by any sufficient cause to lodge the appeal within time prescribed by law; and that in the affidavit there is no any sufficient cause or account for each day of delay.

At the date the case was called for hearing, the applicant was fending himself and the respondent was under the representation of Mr. Martin Kilasara, learned advocate. The applicant commenced by describing the dispute area to be 15 x 8 paces according to paragraph 3 of the affidavit which he prayed that it be adopted. As to the description of the dispute land, it is irrelevant at least for now. It will be dealt with later if at all the application will be allowed. The applicant has then attributed his delay to have been caused by the late supply of the judgment and decree. No other explanation further than that brief statement.

In the reply submission, the counsel for the respondent has submitted that they are vigorously opposing the application. The grounds are contained in the counter affidavit which he made a prayer to adopt the same to be part of the submission. In his submission the counsel has stated that the copies of judgment, proceedings and decree were ready for collection on 18/01/2022. It is obvious by looking at annexure R<sub>1</sub> of paragraph 8. The

respondent has opinion that the delay was inordinate. The applicant did not make follow-up early as it was done by the respondent.

The applicant has failed to authenticate that he received the document on 26/01/2022 as stated in paragraph 9 of the affidavit. Finally, the respondent has prayed that this court ignores the averment that the documents were supplied late.

The respondent's counsel has attacked the concept of overwhelming chances of success as a frivolous one. The plot in dispute is the same property in Application No. 109 of 2008, and the parties are the same. The argument in that the application is the same as in the current submission. The said application was between the applicant herein and Amina Warankira. The decision was in favour of the respondent. It has never been invalidated by any superior court.

The counsel submitted that even if it would be assumed that there has never been any decision as submitted hereinabove, still the respondent has been in occupation of the said dispute premises since 1972 and the dispute arose in 2016 after the applicant had trespassed and forcefully constructed a building. He prayed that this application has no merit and it should be dismissed.

The respondent has also prayed this court to consider statements in paragraph 9-10 of counter affidavit. That there is no account of each day of delay. That has not been done. The Judgment sought to be challenged was delivered on 6/12/2021 the applicant applied for documents on 13/12/2021. The applicant has accounted for 7 days only in the affidavit



and reply to the counter affidavit. Also, the respondent received copies on 18/1/2022 and the applicant allege to have received the documents on 26/01/2022. The days have not been accounted for. The application was filed on 7/2/2022, thirteen days after receiving the copy. In total 28 days have not been accounted for. The applicant used 13 days to find a person to prepare necessary documents. It is a trite law that each day of delay must be accounted for. During submission the applicant submitted that the delay after 26/01/2022 was due to preparation of the documents which he sought to rely in an appeal hence this application. The applicant has stated that he was looking for the person to prepare the documents for filing the case. That however is not in the affidavit save for the general statement that there was delay in supply.

If I buy the idea that the documents were ready on the 18/01/2022 then I must also infer that the applicant did not make follow up for the documents. As there is no any authentication that the documents were received on 26/01/2022. I must also agree that the delay was due to sloppiness by the applicant.

I have observed herein above that the reason of delay have not been explained fully in the affidavit. It was decided that reason for delay must be stated in the affidavit; this is according to the case of **The Registered Trustees of Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government and Three others, Civil Appeal No. 147 of 2006 (DSM)** where it was held:



*"Reasons for failure to appeal on time must be given on an affidavit not on submission because submission are not evidence".*

The applicant has stated the reasons for delay after receiving the documents in the submission. That cannot be taken into consideration as it is not allowed.

In conclusion, I find that the applicant has failed to account for each day of delay and as a result the application must fail. I accordingly dismiss the application with costs. It is ordered accordingly.

DATED and DELIVERED at Moshi this 31<sup>st</sup> day of May, 2022.



*T. M. Mwenempazi*  
**T. M. MWENEMPAZI**  
**JUDGE**

Ruling delivered in court 31<sup>st</sup> day of May, 2022 in the presence of the applicant appearing in person and the respondent also appearing in person.

*T. M. Mwenempazi*  
**T. M. MWENEMPAZI**  
**JUDGE**