

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISCELLANEOUS LAND CASE APPLICATION NO.3 OF 2022

ZYORA SHIWA SOTE..... APPLICANT

VERSUS

MAGNUS JOSEPH NYONI..... RESPONDENT

RULING

27.06.2022 & 12.07.2022

U. E. Madeha, J.

The Applicant has filed this application by way of chamber summons made under section 14(1) of the Law of the limitation Act (Cap 89 R.E. 2019) and any other enabling provisions of the law seeking for a grant of extension of time so that he may file an appeal out of time against Land Case No. 82 of 2018 that was concluded before the District Land and Housing Tribunal Songea.

The chamber summons is supported by an affidavit deponed by Zyora Shiwa Sote who is the Applicant. His prayer is based on the following grounds as found in paragraphs two, three, four, five and six of his affidavit which they read as follows:

1. *That, I'm the deponent of this affidavit and conversant with the facts. I'm about to depone hereunder.*
2. *That, I was Defendant in Land Case No. 82 of 2018 before District Land and Housing Tribunal at Songea and finally determined on 26th November 2021 by Hon. Jesca Raphael, whereas the decision was delivered in favour of the Plaintiff (Attached herewith is a copy of the Judgment from District Land and Housing Tribunal at Songea and is hereby marked as Annexure A, for which leave of this Tribunal is craved for it to form part of this Affidavit).*
3. *That, I was aggrieved with the decision of the District Land and Housing Tribunal at Songea. However, I lodged the appeal before this Honourable Tribunal on 20th December 2021 but the Tribunal officers told me that I must attach a copy of the Decree from District Land and Housing Tribunal at Songea in my appeal.*
4. *That, I went to the District Land and Housing Tribunal at Songea on 22nd, December 2021 in order to get a copy of the Decree but the Honorable Magistrate was at Mbinga at that time. Hence, I received the copy of the Decree on 18th, March 2022. Herewith is the copy of my letter requesting for Decree and a copy of Decree hereby*

collectively marked as an ANNEXURE – B and ANNEXURE – C, (for which leave of this Tribunal is craved for it to form part of this Affidavit).

- 5. That, the delay to lodge the appeal in time to this Honourable Tribunal is neither deliberate nor attributed to negligence or in action but rather the reason beyond my control.*
- 6. That, there are overwhelming chances that the Applicants will succeed in this Application and if this Honourable Tribunal finds it inappropriate to grant the prayer sought in the chamber summons the applicant is likely to suffer irreparable loss.*

The application was canvassed by way of written submissions whereas both sides were unrepresented that is they argued the application individually.

Primarily, the Applicant prayed that his affidavit be adopted and form part of his submission. Thereafter he requested that this Court be pleased to grant the extension of time so that he may file an appeal out of time. He elaborated that he was the Respondent in the Land Application No.82 of 2018 which proceeded against him. That as explained on page three (3) of his affidavit, there was a delay in obtaining the copy of the decree which

was necessary for the appeal to be competent. That the copies of the decree were supplied on 18th March 2022.

That on that particular date, the Applicant was already out of time to appeal for almost sixty-eight (68) days. He made reference to the requirement of Order XXX1X Rule 1 of the Civil Procedure Code (Cap. 33 R.E. 2019) which states that: "The copy of the judgment and decree is a legal requirement in instituting appeal." The Applicant further submitted that he applied for a copy of the decree on 22nd, December 2021. Unfortunately, he was supplied with the said copies on 18th, March 2022 whereby the chairman was required to sign the same but he was in Mbinga. Hence the delay in filing the appeal was caused by the tribunal.

The Applicant further lamented that when he initially filed the incompetent appeal, he was in time but since he is a layperson, he was not conversant with concerned legal procedure. And that, on being notified the same he made prompt efforts for the matter to be rectified in the district land and housing tribunal of Songea. Afterwards, he immediately made an effort to file this application for the extension of time. Ultimately, he argued that the intended application has overwhelming chances of success and for the interest of justice he prays that his prayer be granted as there are

irregularities on the face of the record that leads to the illegality of the decision so intended to be challenged.

In reply, the Respondent also before proceeding with his arguments sought to adopt his affidavit so that it forms part of his submission. Having done so, he contended that the Applicant has not adduced sufficient reason to warrant an extension of time to file his appeal. That the main reason advanced by the Applicant is that the Tribunal failed to supply him with the copy of decree on time. To his perception, that was negligence on the Applicant side and that his excuses are baseless. That if the chairman was absent, he should have produced proof of the same, additionally he resonated that even if the chairman was absent the rest of the court staffs would sort the Applicants matter. He argued, the Applicant was negligent as he just relaxed at his home waiting to be availed copies of the decree instead of taking initiatives of following the same to the tribunal. He made reference to the case of **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002, Court of Appeal at Dar es salaam (unreported) where the Court stated that:

" It is trite law that an application for the extension of time is entirely in the discretion of the Court to grant or to refuse

it, and the extension of time may only be granted where it has been sufficiently established that the delay was with the sufficient cause."

Having perused the DLHT records I found that the decision was read on 26th, November 2021. On 22nd, December 2022 the Applicant requested to be given a copy of the decree whereby after that there has been no response or reply to his letter from the tribunal as to when he will be given the same. On 01st, March 2022 the Applicant paid Tanzanian shilling four thousand (4,000/=) as fee to the tribunal so that he could be given the said copy. As a result, on the 28th of March 2022, the Applicant opted to file this application for extension of the appeal period. Meaning that 27 days had passed since the Applicant paid the collection fee of the decree until the day that he submitted this application.

As per the normal administrative court's practice a party should be led to put evidence (by signing) of the dates he or she collects a judgment, proceeding, and decree whereby the same is usually annexed in the case record. However, in the present case I have realized that there is no such record. Thus, out of such inadequate records on the information about the dates when the Applicant was furnished with the copy of decree it is my best

guess that it was not yet drafted by 22nd, December 2021. Besides, the judgement was stamped with a 'certified true copy of the original' seal and not the Court seal while the decree was stamped with a court seal but it lacked the date.

Therefore, taking into consideration the circumstances of this case I hereby condone the delay and find that the Applicant deserves exclusion of time for the time he was late in getting his copies so he could file his appeal. Reference may be made to the case of **Alex Senkoro and three others v. Eliambuya Lyimo** (as an administrator of the estate of Fredrick Lyimo, Deceased) Civil Appeal No. 16 of 2017, Court of Appeal of Tanzania at Dar es salaam (unreported), where the Court discussed sub-sections (2) and (3) of Section 19 of the Law of Limitation Act [Cap 89 R.E. 2019] to the effect that the same allows automatic exclusion of the period of time requisite for obtaining a copy of decree or judgement appealed from the computation of the prescribed limitation period. The said subsections provide that: -

"19. -(1) In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded.

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

(3) where a decree is appealed of sought to be reviewed, the time requisite for obtaining a copy of the judgement on which it is founded shall be excluded."

Basing on the foregoing and the elaborations as given in the case of **Alex Senkoro** (Supra), it is my considered view that the Applicants were not required to file an application for an extension of time to file an appeal; he was to file an appeal directly to the High Court upon receiving copy the decree. In regard to that, time started to run when the copy of the decree was handed over to him. Thus, he ought to appeal and not request for an extension of time to file an appeal.

Therefore, I condone the Applicant's delay and proceed to order that the Applicant should file his appeal within ten (10) days, that is from the date they are provided with the copy of this ruling. It is so ordered.

DATED at **SONGEA** this 12th day of **JULY**, 2022



A handwritten signature in blue ink, appearing to read "U. E. Madeha", is written over a dotted line.

U. E. MADEHA,
JUDGE.
12.07.2022