

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISCELLANEOUS LAND APPLICATION NO. 65 OF 2020

(Originating from Land Appeal No. 272/2020 in the District Land and Housing Tribunal for Dodoma & Arising from Bahi Sokoni Ward Tribunal)

MAPINDUZI ALLY.....APPLICANT

VERSUS

MAKOYE PAULO.....RESPONDENT

RULING

(EX – PARTE)

31/03/2022 & 05/05/2022

KAGOMBA, J

After MAKOYE PAULO, the respondent, had absented himself in Court for hearing of this application despite being duly served, the Court proceeded to hear MAPINDUZI ALLY, the applicant herein, *ex-parte*.

MAPINDUZI ALLY applied to this Court for extension of time to file his appeal against the decision of the District Land and Housing Tribunal for Dodoma in Land Appeal No. 272/2018 which was delivered on 24th day of October, 2020. He also applied for costs and any other reliefs this Court may deem fit and just to grant.

In his supporting affidavit, the applicant averred that he was the appellant in the said Land Case No. 272 of 2018 and after hearing, the case was scheduled for Judgment. However, on the date of Judgment he was informed that the file had been misplaced and was advised to make follow up to know the date the case would come for judgment. That, despite his great effort in following up the matter, the applicant was surprised to be summoned on 4th day of August, 2020 to appear before the Tribunal and when he did appear, he was informed that the matter was coming for execution proceedings. He further averred that on that date, it was when he came to learn that the Judgment was pronounced by the Tribunal on 24th day of October, 2020 (sic) and a certified copy thereof was availed on 16th day of December, 2019 which was eight days before the time limit for presenting Petition of Appeal. A copy of the Judgment to show the date of its delivery and certification was attached to the supporting affidavit.

The applicant further averred that after great effort he was availed with a copy of the decree on 10th September, 2020 but the same does not bear the date it was issued. He added that the delay in filing his appeal within time was not deliberate but was due to the reason that he was not given the date of pronouncement of the Judgment, and he was not supplied with a copy of Judgment and Decree within time.

In his oral submission to this Court during *ex-parte* hearing, the applicant who appeared personally without legal representation, prayed to adopt what he had averred in his affidavit. He also told the Court that there was a foul play at the Tribunal that led to his delay to file his appeal within time as explained above.

Upon perusal of the Court records, it appeared evident that the respondent appeared in person on 18/5/2021 where he prayed to be served with a chamber summons and affidavit. Records further show that the respondent was duly served but he opted not to file his counter affidavit. Previously, as Court records show, the respondent had once refused to accept summons. Under such circumstances the Court had to consider the application on the basis of what averred by the applicant.

Despite this being an *ex parte* ruling the requirement of the law are the same. For the application to be allowed the applicant has to show sufficient cause for the delay. The issue is therefore whether the applicant has adduced sufficient reasons or cause for his application to be granted.

In determining the application at hand, I recall the statement of the Court of Appeal in **SELINA CHIBAGO V. FINIHAS CHIBAGO**, Civil Application No. 182 "A" of 2007 where the Court held:

"Each case, therefore, should be looked at in its own facts, merits and circumstances, by looking at the circumstances of the case before arriving at the decision on whether or to sufficient reason has been show for extension of time."

I have further looked at the guidance made in **LYAMUYA CONSTRUCTION COMPANY LTD VS. BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA**, Civil Application No. 2 of 2010 (unreported) where the Court of Appeal had set criteria to guide Courts in determination of applications for extension of time. The criteria set in the cited decision are; the reason for

lateness the degree of the lateness, the prospects of succeeding in the intended appeal and obtaining the relief sought against the other party as well as whether there will be prejudice to the other party.

Guided by the decision in **LYAMUYA CONSTRUCTION** (supra), it is the finding of this Court that the degree of lateness is very high. The Judgment was passed on 24th October, 2019 and certified on 16th day of December, 2019. The applicant had 45 days to file his appeal from the date the Judgment and Decree were certified.

The Decree is, however, undated. Basing on the date of certification of the Judgment which was 16th day of December, 2019, the applicant had taken over nine (9) months to file his application for extension of time. As for the decree which is neither dated nor certified, the applicant has told this Court in his affidavit that he was given copy of the same on 10th September, 2020. For non-appearance of the respondent this fact has not been challenged. As the fact is in the affidavit affirmed by the applicant, the Court gives the applicant that benefit of doubt and takes 10th September, 2020 as the date the applicant was availed with a copy of the Decree for purposes of filing his application.

Based on the date of 10th September, 2020 to the date of 14th September, 2020 when this application was eventually filed, it is only four (4) days which can be taken to be reasonable time. For this reason, this Court holds that degree of lateness counting from the date the Decree copy was availed to the applicant is reasonably prompt.

As for the reason for lateness, the applicant has told this Court of the ordeal he faced in knowing the date of pronouncement of judgment and the delay that that ensued in issuing copies of the Judgment and Decree. The allegation made by the applicant that the date of judgment was deliberately hidden from him by those whom he contacted at the Tribunal, much as the same are serious allegations, they are not uncommon. The circumstance of the allegation however is such that the applicant can not be required to prove otherwise than to state the same in his affirmed affidavit. In absence of respondent's counter affidavit, this Court again gives the applicant benefit of the doubt with regard to that reason for lateness.

On prospects of the applicant succeeding in the intended appeal, this Court has considered the applicant's submission that he has evidence of ownership of the disputed land while the respondent does not. Since at this stage the Court does not consider the appeal but the application for extension of time to file the same, the prospects of the applicant succeeding in the appeal are high if it will be proved that he has evidence of ownership and the respondent does not.

Having analyzed those criteria for consideration of this application, the Court is of the view that, under the circumstances of this case as explained herein, there exists a sufficient cause for granting this application. The applicant has shown resilience to fight for what he considers to be his right in the disputed land and this Court finds no reason not to allow his spirited course.

The application is accordingly granted. The applicant has forty-five (45) days from the date of this ruling to file his appeal, if he still intends to do so. No order as to costs.

Ordered accordingly.

Dated at Dodoma this 5th day of May, 2022



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba".

**ABDI S. KAGOMBA
JUDGE**