

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**MISC. LAND APPLICATION NO. 39 OF 2020**

**SHANTA MINING COMPANY LIMITED.....APPLICANT**

**VERSUS**

**GABRIEL ISSA NYIMBI .....RESPONDENT**

**(Originating from the Judgment of District Land and Housing Tribunal for  
Singida, Sululu- Chairman)**

**Dated the 27<sup>th</sup> of February, 2020**

**In**

**Land Application No. 55/2017**

.....

**RULING**

**11<sup>th</sup> May & 5<sup>th</sup> August, 2022**

**MDEMU, J:.**

This is an application for extension of time filed by the Applicant on 26<sup>th</sup> day of June, 2020. It is under the provisions of Section 41 (2) of the Land Disputes Courts Act, Cap. 216 and Section 95 of Civil Procedure Code Cap. 33. The Applicant prays for the following orders, that is to say:-

- 1. That, the High Court may be pleased to grant the Applicant an extension of time within which to file an Appeal from a Judgment of the District Land and Housing Tribunal in Land Application No. 55 of 2017 by Hon. Sululu dated 27/02/2020 out of time.*

*2. Any other relief the Court may deem fit and just to grant.*

*3. Cost be provided for.*

The application is supported by an affidavit sworn on 23<sup>rd</sup> day of June, 2020 by one David Rwechungura, the Applicant's Advocate. The Respondent affidavit in reply to oppose the application was affirmed by Hemed R. Kulungu, learned Advocate. When the matter came for hearing 11<sup>th</sup> May, 2022, the Applicant was represented by Mr. Yongolo, learned Advocate whereas the Respondent was represented by Mr. Hemed R. Kulungu, learned Advocate too.

In support of the application, Mr. Yongolo after adopting the affidavit of the Applicant's Advocate to form part of his submissions, submitted then that; the Applicant delayed to appeal within time because he was supplied with the certified copies of judgment and decree on 17<sup>th</sup> June, 2020 while the decision subject to this application was delivered on 27<sup>th</sup> February, 2020. He added that, in terms of section 19(2) of the Law Limitation Act, Cap.89, time to obtain decision/decreed is excluded. He prayed the application to be granted.

In reply, Mr. Kulungu adopted the counter affidavit to form part of his submissions and submitted further that, the issue that the application is in time is ambiguous. Why then they filed this application for extension

of time? He argued that, under paragraphs 5 and 8 of the affidavit, there are reasons as to why the appeal was not filed in time. Namely; failure to have copies of judgment and decree in time and sickness of the Applicant's Advocate.

On failure to have documents in time, he said that, the Applicant annexed the first letter which was written one day after delivery of judgment, that is, on 28<sup>th</sup> February, 2020. The second letter was written on 6<sup>th</sup> day of April 2020 and the third letter was on 8<sup>th</sup> day of June, 2020. He contended that, the interval between letters indicates that the Applicant was not serious in following up the documents he requested for.

Regarding sickness of the Advocate, he submitted that, the annexed medical transcripts indicates that the Advocate was discharged on 22<sup>nd</sup> of June, 2020 but there is no indication as to when he was admitted. He said, the Applicant didn't account for the 116 days of delay. On this, he cited the case of **Damas Nyoyo vs. Musa Samson, Land Application No. 23/2021**. He thus prayed the application be dismissed.

In rejoinder, Mr. Yongolo almost reiterated his submissions in chief. He thereafter added that, the Applicant's act of applying for copies of judgment and decree a day after judgment is evident that, he was serious is pursuing his rights. The subsequent two letters that followed, corroborated the said fact.

On the discharge form from Iringa Hospital, he said that, the same has both admission and discharge dates. He observed therefore that, the delay was not actuated by Applicant's negligence. He thus distinguished the case of **Damas Nyoyo vs. Musa Samson** (supra) cited by the Respondent.

Having carefully gone through submissions of both parties, the Applicant's affidavit and Respondent's counter affidavit, the issue to be determined here is whether the Applicant has shown good and sufficient cause for the delay.

It is well established principle of law that, extension of time will only be granted where the Applicant has shown good and sufficient cause. In arriving at that, Section 14(1) of the Law of Limitation Act, Cap. 89 confers discretionary powers to Courts to enlarge time where the Applicant has demonstrated sufficient reasons. The Section reads:

*"Notwithstanding the provisions of this Act, the Court may for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or an application for the extension may be made either before or after of the expiry of the period of limitation prescribed, for such appeal or application".*

As said, the crucial issue in the instant application is whether the delay was with sufficient reasons. In the affidavit and as submitted, the main reasons adduced by the Applicant for the delay in filing the appeal is that the Tribunal delayed in supplying him copies of the impugned decision.

According to the record, the impugned decision was delivered on 27<sup>th</sup> day of February, 2020. In Annexure C&D 1 to the affidavit, the Applicant requested through letter dated the 28<sup>th</sup> day of February, 2020 to be supplied with copies of judgment and a decree. The said letter was received by the Tribunal on 28<sup>th</sup> day of February 2020. It was followed by physical follow up though dates were not mentioned. Equally, two reminder letters by the Applicant dated 6<sup>th</sup> day of April, 2020 and 8<sup>th</sup> day of June, 2020 as per annexure C & D-2 and C & D -3 respectively followed. However, it was until 17<sup>th</sup> June 2020, when copies of judgment and decree were ready for collection and in fact, were collected by Salma Kidile as per Annexure C & D -4 of the Applicant's affidavit. That notwithstanding, the application was nevertheless not filed soon thereafter.

The second set of facts in the delay connected to the foregoing is associated with sickness of the Applicant's Advocate as per paragraph 10 and annexure C & D -6 of the affidavit. According to those prescriptions, the learned Advocate was admitted at Iringa Regional Hospital from 16<sup>th</sup>



June, 2020 and was discharged on 22<sup>nd</sup> June, 2020. It was on 23<sup>rd</sup> June, 2020 when this application was filed. As it is, from when the documents were supplied to the filing of application, the Applicant acted promptly in filing this application. I therefore hold that the Applicant has shown sufficient cause for this court to extend time for him to appeal out of time.

I consequently allow this application as prayed for. Time to appeal is hereby extended for forty-five (45) days from the date of this ruling. It is so ordered.



**Gerson J. Mdemu**

**JUDGE**

**05/08/2022**

**DATED at DODOMA** this 05<sup>th</sup> day of August, 2022.



**Gerson J. Mdemu**

**JUDGE**

**05/08/2022**