

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 19 OF 2022

(C/F in the District Land and Housing Tribunal for Karatu at Karatu, Application No. 55 of 2018)

ALFONCE MICHAEL.....APPLICANT

VERSUS

LEVINA PETRO (Administrator of the Estate of

The Late PETRO LAWALA SIGHIS).....RESPONDENT

RULING

20/7/2022 & 26/08/2022

GWAE, J

Before me is an application for extension of time made under section Section 41 (2) of the Land Disputes Courts Act, Cap 216 Revised Edition, 2019 and Section 14 (1) & (2) of the Law of Limitation Act Cap 89, R E, 2019. The applicant, Alfonse Michael is seeking an indulgence of the court to exercise its discretion enlarging time within which he can be able to file his appeal out of time against the judgment and decree of the District Land and Hose Tribunal (DLHT) in Application No. 55 of 2018 delivered

on 14th day of December 2021 in favour of the respondent, Levina Petro, the administratrix of the estate of the late Petro Lawala Sighis.

An affidavit accompanying this application capture the reason for the delay by the applicant which is stated to be a failure to obtain the copies of the judgment and decree within time. On the other hand, the respondent opposed the application through her counter affidavit where she seriously contended that, the intended appeal is an afterthought as the DLHT's certified copies of the judgment and decree were signed and ready for collection on 14/12/2021.

The respondent's counter affidavit was accompanied with a notice of preliminary objection on two points of law namely;

1. The applicant's application is incompetent before the court for being brought prematurely.
2. The applicant's application was drawn by advocates from Karatu Law Chamber, Noel Stephen James Siay being an advocate at Karatu Law Chamber is incompetent to act as Commissioner for Oaths and thus, the affidavit in support of the applicant's application is incurably defective.

Before this court, the parties appeared in person unrepresented. With leave of the court the preliminary objection was disposed by way of written submission.

Supporting his preliminary points of objection the respondent stated that, the application before this court has been filed prematurely as the applicant obtained copies of the decree on the 11th February 2022 and filed the present application on the 16th February 2022 therefore as per section 19 (2) of the Law of Limitation (Act supra) where the period of time for obtaining copies of decree are excluded, the applicant was still within time.

As to the second point of preliminary objection the respondent submitted that, since the counsel who drawn the application and the one who acted as a Commissioner for Oath are from the same office (Karatu Law Chamber) therefore the affidavit is incurably defective in terms of Regulation 96 (2) of the advocates (Professional Conduct and Etiquette) Regulations, G.N No. 118 of 2018 where an advocate is restricted from taking a matter when it is probable that an advocate or a partner or associate of the advocate will be required to give evidence. Therefore, the respondent prayed for the application to struck out with costs.

On his part, the applicant replied that, extension of time is not automatic and that, since he is out of time as the judgment was delivered on the 14th December 2021 the time to appeal had already expired and therefore, he has opted to filing of this application.

As to the second point of the preliminary objection, the applicant submitted that the point the applicant submitted that there is no proof that advocate Noel Siay and advocate Samwel Welwel are from the same law firm, therefore to ascertain that, both come from the same law firm will inquire evidence and thus, disqualifies the raised point to be suitable for being raised as a preliminary objection in the eye of the law. He reinforced his argument by the case of **Mukisa Biscuits Manufacturing Company Limited vs. West End Distributors Limited** (1969) EA 696.

Moreover, the applicant argued that, advocate Samwel Welwel has never represented the applicant neither at the tribunal nor in this court therefore the rule cited by the respondent counsel is irrelevant. The applicant went on to state since advocate Welwel was engaged only for drawing he could not in any way be required to give evidence except to the advocate who administered oath.

In the short rejoinder, the respondent submitted that the issue that advocate Siay and advocate Welwel are working from the same firm does

not need evidence as argued by the applicant on reason that it is clear from the documents drafted by advocate Welwel of Karatu Law Chamber of P.O. Box 338 Karatu and at the same time the applicant's affidavit was attested by advocate Noel Siay with his stamp bearing postal address P.O Box 338 Karatu. According to the respondent this is an indication that both advocates come from the same law firm.

Having read the rival arguments from both parties it is now time to determine the preliminary points of objection. However, I wish to start by addressing the second point of the preliminary objection which need not detain me much. This court has given a carefully look at the cited rule alleged to be contravened in relation to the application at hand. From the records it should be made clear that it is undisputed fact that advocate Samwel Welwel and advocate Noel Siay are from the same law firm styled Karatu Law Chambers however since advocate Samwel Welwel was only engaged for drawing and filing of the application, meaning that his contract with the applicant ended when he filed the present application in this court this court is of the view that the administration of oath by his fellow advocate does not occasion any miscarriage of justice since the said advocate Welwel was not representing the applicant. Had it been that advocate Welwel was representing the applicant perhaps this court would

have held otherwise as the said advocate would have an interest in the said case and would likely be required to give evidence. That being said it is the finding of this court that the cited rule is irrelevant with the circumstances of this case and therefore the preliminary point of objection is bound to fail.

Coming to the first point of the preliminary objection section 19(2) of the Law of Limitation is very clear that 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.

In the matter at hand, it is with no doubt that, the applicant's delays to file his appeal on time was caused by his failure to obtain the copies of judgment and decree on time. This is evident through the attached copies of judgment and decree which shows that the judgment was delivered on 14/02/2021 but according to the decree it appears that the same were issued on 11/02/2022. As correctly submitted by the respondent's counsel the time to appeal started to run from 11/02/2022 when the applicant obtained the certified copies. Therefore, as this application was filed on

16/02/2022 it is certainly clear and undisputable by the parties that the applicant had still sometimes to file his appeal. However, section 41 (2) of the Land Disputes Courts Act reads as follow;

*"An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order: Provided that, the High Court may, for the good cause, extend the time for filing an appeal **either before or after the expiration of such period of forty-five days** (Emphasize is mine)".*

From the above quoted provision of the law, it is therefore vibrantly clear that, the applicant is at liberty to file an application for extension of time either before or after the expiry of the prescribed time.


Having overruled the respondent's points of objection as herein above, I find no reason to discuss at length the merit or otherwise of this application since the applicant is salvaged by section 19 (1) of the Law of Limitation Act (supra) as correctly argued by the respondent that this application was filed before lapse of forty five (45) days from the date he was supplied with the necessary documents. This application is found to be based on a fear or uncertainty on whether the days between when he applied for copies of judgment and its decree and when he was actually availed with the same would be excluded. It is my view, that exclusion

of the date from when a party requested for the certified copies of a decree or order and judgment to the date when he is availed, is statutorily excluded. That being the case, the applicant bears no obligation to show good cause for his delay since his application for extension was lucidly filed even before lapse of the statutory period within which his appeal would be filed.

That said and done, this application is granted, the applicant shall file his appeal within fourteen (14) days from the date of this delivery of this ruling. Costs of this application shall be in the course.

It is so ordered.




M. R. GWAE
JUDGE
26/08/2022