

**IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISC. LAND APPLICATION NO. 107 OF 2021

(Arising from Application No.123/2008 in the District Land and Housing Tribunal for Mwanza)

ROBERT MAZIBA SENGEREMA.....APPLICANT

VERSUS

**MINZA OMER A NDATULU (As administrator of
the estate of the late Kumaliya Sayi**

.....RESPONDENT

RULING

10th August & 1st September, 2022

DYANSOBERA, J.:

The applicant, Robert Maziba Sengerema seeks grant of extension of time to lodge an appeal to this court against the decision of the District Land and Housing Tribunal for Mwanza in Land Application No. 123 of 2008 delivered on 15th November, 2016. In both his affidavit in support of the application and his written submissions presented to Court in compliance with the order of this court 6th day of July, 2022, the applicant avers that he was late to lodge the appeal within the prescribed time due the delay in being supplied with copies of proceedings, judgment and decree despite he having written several letters, raising a complaint to the Ministry of Land, Housing and Settlement and seeking a writ of prerogative orders against the Chairman.

In his affidavit in reply, the respondent disputed almost all the averments the applicant made in his affidavit and put him to strict proof

thereof. She asserted that the delay was caused by the applicant's own negligence and has no one to blame.

It should be noted that the grant or otherwise of the extension of time is within the discretionary powers of the court and such discretion has to be exercised judiciously and judicially according to the circumstances of a particular case.

In the instant case, it has been established by the applicant that immediately after the delivery of the judgment, the applicant wrote a letter requesting for the supply of copies of judgment, decree and proceedings. There were other subsequent letters as a reminders. Apart from the applicant's physical follow ups with the registry, the applicant approached the in charge for assistance and managed to meet the Chairperson.

Likewise, beside complaining to the Ministry of Land, Housing and Settlement, the applicant sought a writ of prerogative orders of mandamus against the said Chairperson.

Lastly, the applicant argues that there was illegality in the decision of the District Land of Housing Tribunal for failure to involve assessors.

The applicant raised a concern on the conduct exhibited by respondent for failure to abide by the time frame given by the court. According to him, by the order of this court dated 6th July, 2022, the respondent was required to file her written reply to the submission in chief

by 3rd August, 2022 but she opted to file it on 11th August, 2022 even without leave of this court. The applicant prayed that the respondent's submission to be discounted. He buttressed his argument by citing the decision of this court in the case of **Said Abdallah Kinyanyite v. Fatuma Hassan and another**, Civil Appeal No. 87 of 2003.

With respect I agree, this court on 6th July, 2022 agreed the application to be argued by way of written submission on the following time frame: -

1. The submission in chief in support of the application to be filed by 20.7.2022,
2. The submission in reply to be filed by 3.8.2022 and,
3. Rejoinder, if any, to be in place by 10.8.2022

There is no dispute that the applicant filed his written submission in support of the application on 20.7.2020. The respondent filed her reply on 11.8.2022, eight days out of the given time. She was therefore out of time and no leave of the court was sought and granted.

This court in Said **Abdallah Kinyanyite v. Fatuma Hassan and another** (supra) observed at p. 4 of the copy of the typed judgment as follows:

'it has more than often been held by this court that written submissions which are filed outside the period specified in the court's order and without leave of the court should not be considered even if they

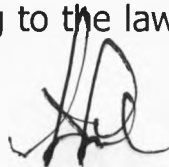
contain meritorious argument. The reason behind this holding is not only because once the court's order is made it has to be respected but also those written submissions which are filed out of such period and without leave of the court have no legal basis.'

On basis of that legal position, I will not consider the respondent's written reply.

Having considered the merits and the likely demerits of this application by examining the averments of both parties hereto and having taken into account applicant's the written submission in chief in support of the application, I am satisfied that the applicant has adduced sufficient reason not only for the delay but also for the grant of extension of time.

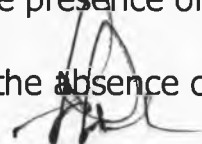
The leave is granted and time for the applicant to file an appeal out of time is granted.

The appeal to be filed according to the law. Costs to be in the intended appeal.



Dyansobera
Judge
1.9.2022

This ruling is delivered under my hand and the seal of this Court on this 1st day of September, 2022 in the presence of Mr. Mwanaupanga learned Counsel for the applicant but in the absence of the respondent.



Dyansobera
Judge

