

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

MISC. LAND APPLICATION CASE NO. 49 OF 2021

*(From the decision of District Land and Housing Tribunal Tabora District
at Tabora in land Case No. 78 of 2019)*

JOYCE MAIKO MSANGAMA.....APPLICANT

VERSUS

RASHIDI BAKARI LUZIGA.....RESPONDENT

RULING

Date: 10/08/2022 & 19/8/2022

BAHATI SALEMA, J.:

The applicant herein **JOYCE MAIKO MSANGAMA**, instituted this application under section 41 (2) of the Land Disputes Court Act, Cap. 216 [R.E 2019] seeking the orders of extension of time to file an appeal and any other order this Court may deem fit to grant.

The grounds as deposed in the affidavit upon which extension of time is sought are summarized into two grounds as follows: -

- 1. That, the honorable tribunal entered its judgement on 10th September, 2021 following the tribunal's ruling the applicant*

applied for a copy of the judgment, the same was served to her on 1st November, 2021

- 2. That, the delay to appeal against the decision was beyond the applicant's control and it was not caused by any negligence or sleep of the applicant but rather by the District Land and Housing Tribunal.*

In his counter-affidavit, the respondent, Rashid Bakari Luziga strongly disputed the application assertions and required her to strictly prove therefrom.

When the application was called up for hearing the applicant was represented by Mr. Ayo Charles, learned counsel whereas the respondent was represented by Mr. Salehe Makunga learned counsel.

Submitting in support of the application, Mr. Ayo prayed to this Court to adopt the affidavit in support of the chamber application as part of his submission. He contended that Section 41 of the Land Courts Disputes Act, Cap. 216 [2019] gives 45 days to appeal. He submitted that after delivery of the decision; on 10 September 2021 they wrote a letter to the District Land and Housing Tribunal for Judgment and proceedings. They received a copy of the certified judgment on 1st November 2021 when the prescribed time was already expired.

He also submitted that there are also illegalities in the said Judgment. He beckoned this court to extend the time to file outside the prescribed time.

Opposing, Mr. Makunga, learned counsel for the respondent prayed to adopt to counter affidavit to form part of his submission. He submitted that the court has the discretion to grant upon given sufficient reasons. In the case of **Zitto Zuberi Kabwe and others Vs Attorney General, Civil Application No. 365 01 of 201.** Also, he cited the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania (Civil Appl. No.2 of 2010) [2011] TZCA 4.** He disputed that delay in getting the copy of judgment does not suffice at all to be the reason for the extension of time. He submitted that the letter was also written on 23/09/2021 and the judgment was delivered on 10/09/2021. The application must account for all the period of delay.

Also in respect of illegality, the applicant has not stated in the affidavit on the illegality which should be sufficient cause, therefore, the extension of time does not suffice at all.

Rejoinder, the counsel for the applicant submitted that it was true on 23/09/2021 the letter was written to request the supply of judgment as the District Land and Housing Tribunal assured the copy of judgment will be delivered after 10 days but it was not. For that reason

they requested by writing a letter and the copy was certified on 1st November 2021.

Having carefully read the respective submissions from both parties, it is settled law that applications for extension of time will only succeed upon the applicant showing good cause for the delay. This is a requirement of the law under which the present application has been made. To grant or not to grant extensions is within the unfettered discretion of the Court. That is, it must be exercised judicially. See the case of **Lalji Gangji v Nathoo Vassanjee [1960] 1 EA 315** and **Noormohamed Abdulla v Ranchhodbhai J. Patel & Another [1962] 1 EA 447**.

Of all reasons laid down by the applicant, the major one is that the delay was caused by the failure of the tribunal to supply him a copy of the judgment which would enable him to file an appeal to this court on time.

Upon perusal of the court records, I am satisfied with the reason advanced by the applicant that the delay to file his appeal was caused by the failure of the District Land and Housing Tribunal to supply him with the necessary documents to file his appeal to this Court despite all efforts he made as exhibited in Annexure "B".

Having said that, I hereby grant the application; the applicant is now at liberty to file the respective appeal not later than forty-five (45) days from the date of this ruling. Costs to follow events.

Order accordingly.



A. BAHATI SALEMA

JUDGE

19/08/2022

Ruling delivered under my hand and seal of the court in the Chamber, this 19th day of August, 2022 in the presence of both parties, via virtual link.



A. BAHATI SALEMA

JUDGE

19/08/2022

Right to appeal is hereby explained.



A. BAHATI SALEMA

JUDGE

19/08/2022