

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

MISC. LAND APPLICATION NO. 32 OF 2021

Arising from Land Appeal No. 6/2019 original Land Application No. 48/2018 Tabora DLHT)

SAUDA HAMIS NTUNZWEAPPLICANT

VERSUS

1. KHADIJA RASHID
2. SHABANI ALLY
3. JAMES B. NTAMBALA
4. ELISHA B. MASINYA
5. SLYVESTER SINTO



.....RESPONDENTS

RULING

Date: 26/07/2022 & 30/9/2022

BAHATI SALEMA, J.:

The applicant herein, named SAUDA HAMIS NTUNZWE approached this court seeking an order for extension of time to file a notice of appeal against the judgment at Tabora High Court in Land Appeal No. 9/2019, costs of the application, and any other relief this Court may deem fit and just in the circumstances of the application.

The application comes under section 11(1) of the Appellate Jurisdiction Act, Cap.141 [R.E 2019] and is supported by an affidavit sworn by the applicant.

The grounds as deposed in the affidavit upon which extension of time is sought run as follows.

1. That, the appellant in Case No. 9 of 2019 before the High Court of Tanzania at Tabora.
2. That, the said appeal was heard by way of written submission and subsequently the judgment was entered in favour of the respondents and it was ordered that the house in dispute be handed to the 2nd respondent.
3. That, she was aggrieved by the said decision since the 2nd respondent to whom the house was handed never appeared before the court to defend himself.
4. That, she was supplied with the copy of judgment on 19th of August, 2021.
5. That, when she expressed her desire to appeal against the said decision she was told that the time for lodging the notice had expired on 19/8/2021 and she was advised by the court clerk to bring an application for extension of time.
6. That, the delay of 1 day to lodge the notice of appeal was not deliberate but rather an account of the truth that she did not get the copy of judgment soon after the delivery of the judgement.

7. That, if the prayers sought are not granted she stand to suffer irreparable loss since she will not be in the position of challenging the High Court decision which is extremely unfair to her.

In his counter-affidavit, Mr. Kanani Chombala for the 3rd, 4th and 5th respondents vehemently disputed the application and stated that is unmaintainable since the judgement was delivered on 19 July, 2021 then the notice ought to have been lodged on or before 19 September, 2021. However the applicant filed this application on 24 August, 2021 from the date of judgement.

When the application was called up for hearing, the applicant appeared under the Power of Attorney of Sadick Ally Panda unrepresented, whereas the 1st and 2nd were absent; the 3rd, 4th and 5th respondents were represented by Mr. Kanani Chombala, learned counsel.

The applicant submitted that the judgment was delivered on 19/07/2021 and she received it on the 29th day. She submitted that the delay was caused by the court itself that is why he wrote a letter to the Deputy Registrar on 19/7/2021 and on 19/8/2021 she received it. That is the reason why she prayed for extension of time.

In reply the counsel for the 3rd, 4th and 5th respondents opposed to the application that there is no any evidence when she received judgement. In his affidavit there is no any letter attached to show if he prayed for the judgment. He contended that the application No. 32/2022 was filed on 24/8/2021. This is about 35 days from the time the judgement was delivered.

Having gone through the submission made by the parties, the issue is whether the application is meritorious.

The position of the law is clear that the court may for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or application. That position of the law has been expounded in such cases including the case of **Mumello V/S Bank of Tanzania (2006) IEA 227 (CAT)** where it is a settled principle of the law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

Having perused the records and the substance of the application, of all reasons laid down by the applicant that the delay was caused by the court itself. I find this to be sufficient as noted from the court record that she wrote a letter to the Deputy Registrar requesting for the said

judgement. I find that is a sufficient cause for an extension of time since it was not on her part.

With the above observation and in the interest of justice, I grant the application for an extension of time to lodge a notice of appeal with an order that the applicant may file a notice of intention to appeal to this court within thirty days from the date of this order.

Order accordingly.



A. BAHATI SALEMA

JUDGE

30/9/2022

Court: Ruling delivered under my hand and seal of the Court in the Chamber, this 30th day of September, 2022 in presence of both parties, via virtual court.



A. BAHATI SALEMA

JUDGE

30/9/2022

Right to Appeal is hereby explained.



A. BAHATI SALEMA

JUDGE

30/9/2022