

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

MISCELLANEOUS LAND APPLICATION NO. 110 OF 2021

(Originating from Land Application No. 2 of 2021)

AINEA KALEBI MKOMA (Administrator of

The Estate of the late Yoeli Mkoma)APPELLANT

VERSUS

KILWA LABALARESPONDENT

RULING

18/8/2022 & 04/10/2022

GWAE, J

It is the requirement of the law under section 41 (2) of the Land Disputes Courts Act, Cap 216, Revised Edition, 2019 (Act) that, an aggrieved party has to file his or his appeal against the decree or order of the District Land and Housing Tribunal within forty-five days from the date the decree was passed or when the order was made.

The Applicant herein was aggrieved by the decision of Kiteto District Land and Housing Tribunal at Kibaya delivered on 20th October 2021 and he was supplied with certified copies of the judgment and decree on 29th day

of October 2021 nevertheless according his opinion, he was out of the prescribed period due to his given reasons through his affidavit that he initially filed his appeal in time but the same was inappropriately filed on 1st December 2021 in the High Court, Land Division instead of High Court at Arusha District Registry. Hence, on 17th day of December 2021 the applicant brought this application for extension of time under section 41 (2) of the Land Disputes Courts Act, Chapter 216, R. E, 2019 however the same was electronically admitted on 14th December 2021. It is founded on the following grounds;

- i. Inadmissibility /non-approval of the applicant's petition of appeal was never intentional but caused by electronic filing system
- ii. The applicant's delay is not extensive and it is justifiable
- iii. If the application is not granted, the applicant stands to suffer irreparable loss
- iv. That, the applicant never slept over his right as he promptly filed the instant application for extension of time
- v. It is for the interest of justice the applicant be given right to be heard on his intended appeal

The applicant's application did not go unopposed, it is contested through the counter affidavit of the respondent's counsel one Pastor Florence who among other things stated that the applicant never filed his appeal, thus application as the same is not authenticated.

On 14th day of July 2022 when the matter was called on for hearing, the applicant appeared in person whereas the respondent was represented by advocate Pastor Florence. It was then consensually agreed that this application be disposed of by way of written submission.

Supporting his application, the applicant argued that since it is the requirement under the Electronic Filing Rules, 2018 that all pleadings be, electronically filed and that, for any party aggrieved by a decision of the DLHT has to file an appeal to the High Court, Land Division as per Regulation 24 of the District Land Courts (District Land and Housing Tribunal). Regulations, 2008 G. N. 2003. He therefore complied with the law by filing his appeal to Land Division of the High Court though the same was not admitted He expounded that, 4 days while waiting for admission of his appeal is technical delays and 5 days' delay is real or actual delay. He cited the case of **Loshilu Karaine and three others v. Abraham Melkizedeck**

Kaaya (Suing as a legal representative of Gladness Kaaya), Civil Application No. 140/02/ of 2018 (unreported-CAT) where at page 12 it was held that;

"That, unexpected and unforeseen event definitely needed re-organization and, to be fair, period of eleven days cannot be said to be inordinate in preparing and lodging the present application".

The respondent attacked the applicant's submission in that this application was merely filed because of his act of filing an application for bill of costs in the DLHT and he added that, the applicant has been dragging the respondent. He went on arguing that the applicant had not accounted the days of his delay as required by the law from when he received copies of judgment and decree on 29th October 2021 to 1st December 2021 when he filed his appeal. He urged this court to make a reference to the decision of the Court of Appeal of Tanzania in **Mega Builders Limited vs. Simba Limited**, Civil Application No. 319 of 2021 (unreported) where it was held that, the applicant was obliged to account each day of his delay. He further argued that there is no longer the requirement of the law to file an appeal against the decision or order of DLHT exercising its original or revisional jurisdiction with the High Court, Land Division as section 2 of the Land

Disputes Court Act, Revised Edition, 2019 amended in 2010 to do away with Land Division.

In his rejoinder, the applicant reiterated his submission in chief however he added that he accounted each day of delay in his affidavit and that, he had not been negligent as he acted promptly. He also refuted the respondent's contention that this application was filed simply because of the institution of an application for bill of costs by seriously stating that argument is untenable it requires serious scrutiny of the judgment.

As this court has been properly moved by the applicant by citing section 41 (2) of the Land Disputes Courts Act (supra), which reads;

(2) 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.

According to the above quoted provision of the law, it goes without saying that an appeal to this court against a decree or order of the District Land and Housing Tribunal may be lodged within 45 days from when it was passed or made. In case of a failure by an aggrieved party to file within the

prescribed period as the case here, such party must file an application for extension of time either after or before the lapse of the period stipulated by the law by showing good cause to the satisfaction of the court.

That being the position, I am now bound to ascertain if the applicant has demonstrated sufficient cause for his delay. I have dispassionately followed the rival arguments together with their affidavits. Looking at the applicant's affidavit especially at paragraph 3 and the respondent's counter affidavit, it seems to me clearly that, the respondent does not dispute the fact that the applicant obtained the certified copies on 29th day of October 2021. Hence, the time started to run after he was availed of the same since the time he requested for the same must be excluded under section of 19 of the Law of Limitation Act, Cap 89, Revised Edition, 2019.

In our case the applicant was therefore to file his appeal by 13th December 2021 while according to a copy of JSDS/eCase Registration annexed in this application, it is clear that, the applicant submitted his application on 13th day of December 2021. Therefore, he filed this application one day before expiration of the period set for appealing.

More so, if I were to discount the period within which he was availed with the certified copies of the judgment and decree yet the delay of nine (9) days is not inordinate (See **Loshilu Karaine and three others vs. Abraham Melkizedeck Kaaya** (supra) and above all the applicant has been able to explain that, he timely filed his appeal but to the wrong court forum that is Land Division in which the Deputy Registrar of the Court does not have an access. I have also taken into account that, there is an affidavit of the applicant's advocate who stated to have submitted the appeal for admission but the same was not accessed by the Deputy Registrar of the court on the obvious reason that, he filed in the High Court, Land Division. I am fortified in my considered view by a decision in **Mbogo vs. Shah** (1968) EA where it was stated;

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reasons for the delay, whethisthere is arguable case on the appeal ad decree of prejudice".

In our instant application, I find that the applicant had demonstrated good cause for his delay as explained herein above. The applicant has even clearly stated that, after his advocate being informed by the Deputy Registrar

of the technical error on 8th December 2021, he immediately instructed his counsel to prepare this application which was submitted on 13th December 2021 and electronically admitted on the following day (14/12/2021) and physically filed on 17th day of December 2021. In these circumstances and reasons given reasons herein, I am of the increasingly opinion that, this court is empowered to exercise its discretion in favour of the applicant by granting this application.

In the upshot, the application is granted. The applicant is given **ten (10)** from the date of this ruling within which to file his intended appeal. Costs of this application shall abide to an outcome of the intended appeal.

It is so ordered.




M. R. GWAE
JUDGE
04/10/2022