IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND APPLICATION NO. 38 OF 2022

(Arising from the High Court of Tanzania (Bukoba Registry) in Land Appeal No. 19 of 2021 Original Land Application No. 44 of 2017 from the District Land and Housing Tribunal for Muleba at Muleba)

NOVATUS T.C.L KASHAGA .....APPLICANT

VERSUS

JOHANNES KAMUGISHA .....1ST RESPONDENT

DENIS KAKURU ..... 2ND RESPONDENT

ELISA KAINDOA ..... 3RD RESPONDENT

SHAKIRU MUHAMUDI ..... 4TH RESPONDENT

RULING

Date of Ruling: 07.10.2022

A.Y. Mwenda, J.

This is an application for leave to appeal to the Court of Appeal brought under section 47(2) of the Land Disputes Court's Act [CAP 216 R.E 2019]. It is supported by an affidavit sworn by the applicant. In counter thereof, the respondent filed a counter affidavit which was sworn by Eliphazi Bengesi, learned advocate for the respondents.

During the hearing of this application, the applicant appeared in person without legal representation while the respondents enjoyed the legal services from Mr. Eliphas Bengesi, the learned counsel.

When invited to submit in support of his application, the applicant submitted that the judgment of the District Land and Housing Tribunal was delivered on 2/12/ 2020 and he received the copy of judgment and decree on 10/3/2021. He said after receiving the said document he filed the present appeal on 17/03/2021.

The applicant further submitted that the time spent while awaiting for the said documents ought to be excluded in computing the time limitation. To support her argument, he cited the case of VALERIA MCGIVEN VS SALIM FARKRUDIN BALAL, CIVIL APPEAL NO. 586 OF 2019 (CAT) (Unreported). He thus prayed this application to be allowed.

In reply to the submission by the Applicant, Mr. Bengesi prayed the counter affidavit to be adopted as part of his oral submissions. He said the law is clear under section 20(1) of the Land Disputes Courts Act [CAP 216 R.E 2019] that time limit to file appeal to the High Court from the decision of the District Land and Housing Tribunal is 45 days and in case of any delay then the applicant had to apply for extension of time and advance sufficient reasons as per section 20(2) of the same Act.

He submitted that the applicant acted negligently because his letter requesting for the copy of judgment and decree was submitted on 21/12/2020 and the applicant made a follow up on 10/03/2021 almost after the lapse of 61 days and that in the records, there is no evidence that the applicant made several

follow ups. He submitted that even though the applicant received the said copy on 10.03.2021 but still he filed the said appeal on 17.03.2021 and he did not state the reasons for the 7 days delay. To conclude his submission, he said this is purely negligent on the part of the applicant and he cited the case of SAFARI MAZEMBE VS JUMA FUNDISHA, CIVIL APPLICATION NO. 503 & 506 OF 2021 (CAT) (Unreported) to support his arguments. He thus prayed this application to be dismissed.

In rejoinder to the submission by the learned counsel for the respondents, the applicant submitted that, he was within the time line because he filed the said appeal on 17/03/2021 while he received the copy of judgment and decree on 10/03/2021. He submitted that 45 days ought to be counted from the date when he received the said copy of judgment and decree.

The applicant rejoindered further in that he was not negligent and he was not told by the District Land and Housing Tribunal when the records were ready for collection. He thus prayed his application to be allowed.

Having gone through submissions by both parties the issue for determination is whether or not the applicant has demonstrated arguable grounds worth to be tabled before the Court of Appeal.

It is the trite law that in an application for leave to appeal to the Court of Appeal the applicant has to demonstrate that there is an arguable ground worth taking before the Court of Appeal.

In the present application the issue which the applicant intends to be tabled before the Court of Appeal is whether or not his appeal before the High Court was filed out of time.

From the records of Land Appeal No. 19 of 2021 this court while dealing with this issue stated as follows and I quote;

> *"According to the records available in the court file, the District Land and Housing Tribunal at Muleba delivered its decision on 02/12/2020. The Applicant applied for the copy of judgment on 21/12/2020. The copy of judgment was ready for collection on 04/01/2021 but the appellant filed the instant appeal on 17/03/2021. Even if the time spent looking for the copy of judgment was to be excluded, the appellant lodged the appeal out of time. I therefore find merits in the point of objection raised by the respondents. I hereby dismiss the appeal with costs."*

In the present application, I have also revisited the records and noted that from 21/12/2020 when the applicant wrote a letter requesting to be furnished with the copy of judgment and decree, he did not make any follow up to see whether the said documents were ready for collection or not. Although the said

documents were ready for collection by 04/01/2021 it was not, until on 10/03/2021 when he went to collect them.

In his submissions before this court, while relying on the provisions of section 19(2) of the Law of Limitation Act, the applicant said the time he while awaiting for the said documents ought to be excluded in computation of time limitation. To cement his argument, he cited the case of VALERIE MCGIVEN VS SALIM FARKRUDIN BALAL, CIVIL APPEAL NO. 386 OF 2019 (SUPRA).

Much as this court is aware of the principle laid down in the case of Valerie Mcgiven (supra) regarding exclusion of time spent awaiting copies in computation of time limitation, it is however apparent that the circumstances in the case of Valerie Mcgiven (supra) are distinguishable to the circumstances of this case on the following ways. One, that while in the case of Valerie Mcgiven the applicant having forwarded a letter requesting for records, he made several follow ups attempts to see if the same were ready for collection, in the present application the appellant, having forwarded a letter requesting for a copy of judgment and decree did not make any follow up until after 66 days had passed. Although in the case of Valerie Mcgivern (supra) the court said the appellant had no obligation to frequently follow up on the necessary document, I think this statement did not totally do away with the applicant's need to do so (make a follow up). I am of the said view basing on the words which were used by the court in the said case which are that;

"Guided by the case of the Registered Trustees of the Marian Faith Healing Center @ Wanamaombi (supra), in law an appellant had no obligation to frequently follow up on the necessary documents for appeal although it is practical and the realist thing to do."

"The words practical and realist thing to do" entail that obligation lies on the applicant's shoulder. In other words, the said decision did not mean that the applicant may apply for records and relax as long as he wishes and then at later stage decide to go and collect the same.

From the foregoing observations, since the said documents were ready for collection 66 days earlier on, then in the circumstances of this case time started to run from the date when it was certified. Failure by the applicant to make follow up and collect the said documents timely is negligence on his part which cannot be cured by section 19 (2) of the Law of Limitation Act [Cap 89 R.E 2019].

Two, while in the case of Valerie Mcgiven (supra) the appellant, having received the courts records he immediately filed his appeal (on the same date), in the present application the applicant did not do so until after 7 days had passed. On his part, while submitting in support of his application the applicant was of the view that the counting of days ought to begin after receipt of the said documents and for that matter filing 7 days after receipt meant he was within

timeline. I have considered this point and I am not in agreement with him because Section 19 (2) of Law of Limitation Act was not meant to benefit the applicant who is negligent and did not exercise any diligence to follow up on the essential documents so as to file his appeal in time.

From the foregoing observations this court is of the view that there is no arguable case worth to be taken before the Court of Appeal. In view of the above, I thus find no merits in this application and it is hereby dismissed with costs.

It is so ordered.

A.Y. Mwenda

Judge

07.10.2022

Ruling delivered in chamber under the seal of this court in the presence the Applicant Mr. Novatus T.C.L Kashaga and in the presence of Ms. Johanitha Jonathan the learned counsel for the respondents.

A.Y. Mwenda

Judge

07.10.2022