IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)
AT ARUSHA

MISC. LAND APPLICATION NO. 20 OF 2022
(Originating from the District Land and Housing Tribunal for Karatu, Application No. 04 of 2014)

LAZARO ZAKARIA ..... 1ST APPLICANT

ELIAZA ZAKARIA ..... 2ND APPLICANT

Versus

TADEUS MADAWE ..... 1ST RESPONDENT

CHRISTIAN ZAKARIA ..... 2ND RESPONDENT

RULING

24th August & 7th October 2022

Masara, J.

Lazaro Zakaria and **Eliaza Zakaria** ("the Applicants") preferred this application under section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] (henceforth "the Act") and section 14(1) & (2) of the Law of Limitation Act, Cap. 89 [R.E 2019] (henceforth "LLA"), seeking for extension of time to file an appeal against the judgment and decree of the District Land and Housing Tribunal for Karatu (henceforth "the Tribunal") dated 14/12/2021. The application is supported by affidavits deponed by the Applicants. The Respondents contested the application by filing a joint counter affidavit.

Brief facts culminating to this application are as follows: the Applicants unsuccessfully sued the Respondents before the Tribunal claiming trespass in their piece of land measuring ¼ an acre "the suit land"). The land in dispute is located at Sabato hamlet within Karatu District. According to the evidence adduced before the Tribunal, the suit land was sold to the 1st Respondent by the 2nd Respondent. After hearing the parties, the Tribunal declared the 1st Respondent to be the lawful owner of the suit land. In addition, the 2nd Respondent was declared the lawful owner of a one-acre piece of land having inherited the same from his late father. The Applicants were unhappy with the decision. They intended to appeal to this Court but found themselves out of time, hence this application.

On 24/08/2022, when the application came up for hearing, both parties appeared in person, unrepresented. The Applicants intimated that they had nothing to add, other than what they had stated in their respective affidavits. They insisted on their prayer that the application be allowed because the delay was not due to their faults. The Respondents, relying on their counter affidavit as well, prayed for dismissal of the application.

I have considered the affidavits of the parties and annexes thereto. The law is trite that a party who seeks an extension of time to do an act

beyond the time provided by law, has to adduce good or sufficient cause for the delay. This position has been reiterated in a number of judicial decisions, including the Court of Appeal decision in **Nicholaus Mwaipyana vs The Registered Trustees of the Little Sisters of Jesus of Tanzania, Civil Application No. 535/8 of 2019** (unreported), where it was held *inter alia* that: *"There is no naysaying that in terms of Rule 10 of the Rules, a party seeking the Court to extend time within which to do an act beyond the time limited by law has to show good cause for the delay."*

In the instant application, the question is whether the Applicants herein have shown good cause for the delay. According to what they stated in paragraphs 3 to 7 of their respective affidavits, the impugned judgment was delivered on 14/12/2021. They wrote a letter on 15/12/2021 requesting for copies of proceedings, judgment and decree, but that the trial chairman went for his annual leave before issuing the said documents. After several follow-ups, they noted that the copies of the requisite documents were signed on 10/02/2022 after the chairman came back from leave. Documents were availed to them on 11/02/2022 and they filed this application on 14/02/2022. Additionally, under paragraph 8, the Applicants averred that there is illegality in the impugned decision

because the Tribunal made decision over 1.25 acres while the dispute was over 0.25 acres.

On the other hand, under paragraph 4 of their joint counter affidavit, the Respondents contended that copies of judgment and decree were ready for collection on the date of judgment (14/12/2021), before the chairman went for his leave; therefore, that the Applicants were negligent.

I have thoroughly considered the rival affidavits. As correctly stated by both parties, the impugned judgment was delivered on 14/12/2021. The record further shows that on 15/12/2021 the Applicants wrote a letter to the Tribunal chairman requesting for copies of proceedings, judgment and the decree. The decree shows that it was issued on 10/02/2022, as the Applicants averred in their affidavits. Although the receipt shows that the application was filed on 16/02/2022, the Applicants stated that it was filed online on 14/02/2022 and the Respondents did not dispute that fact. I also have no reasons to doubt their averment.

It is trite law that in computing time for appeal purposes, time spent for obtaining requisite documents of appeal is excluded. This is provided under section 19(2) of the LLA, which provides:

"(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment,

the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."

The position has also been restated by numerous decisions including the Court of Appeal decision in **Registered Trustees of Marian Faith Healing Centre @Wanamaombi vs The Registered Trustees of the Catholic Church Sumbawanga Diocese, Civil Appeal No. 64 of 2007** (unreported), which held:

"In view of what we have endeavoured to show above, and in the light of section 19(2) (supra), it follows that the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree ought to have been excluded in computing time. Once that period was excluded, it would again follow that when the appeal was lodged on 19/12/2003 it was in fact and in law not time barred."

From the above position of the law and the decision referred, the period between 14/12/2021 and 11/02/2022 when the Applicants were availed with the copies of judgment and decree ought to be excluded in computing time for filing an appeal. In other words, time started to run on 12/02/2022. That being the case, the Applicants were not dutybound to file this application. They ought to have filed their appeal as they were still on time. Probably that is because they are lay persons, they should

not be condemned for that. Once that period has been excluded, the application was indeed filed in time.

That apart, the Applicants allege that the impugned decision contains an illegality, particularly with respect to the size of the land adjudicated upon. This Court and the Court of Appeal have on a number of occasions allowed a party extension of time where an illegality in the impugned decision is apparent. That being the case, even without traversing the illegality mentioned, it would be appropriate for this Court to extend time to allow the Applicants to file their intended appeal so that the issue of illegality is canvassed in an appropriate forum.

Guided by the above analysis, I find merits in the application. It is therefore allowed. The Applicants have furnished sufficient reasons to warrant them extension of time to file their appeal in this Court. The Applicants to file their appeal within thirty days from the date of this ruling. Costs to be in the cause.

Order accordingly.

Y. B. Masara

JUDGE

7th October, 2022.