

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISCELLANEOUS LAND APPLICATION NO. 37 OF 2021

SALIMU KHALID MALIONDO ----- APPLICANT

VERSUS

MUSSA JUMA KAFUNYE ----- 1ST RESPONDENT

SHAAN PANDISHA-----2ND RESPONDENT

RULING

Date 09/08/2022&21/10/2022

BAHATI SALEMA, J:

The applicant herein, **Salimu Khalidi Maliondo** has moved this Court by way of chamber summons under section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] seeking an extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Tabora in Land Application No. 63 of 2015 delivered on 19/11/2018.

Respondents in the application are Mussa Juma Kafunye and Shabani Pandisha who will be identified as 1st and 2nd respondents respectively. In response to the application, the first respondent did not file any counter affidavit to oppose the application. On the part of the 2nd respondent, he filed a counter affidavit and opposed the application.

During the hearing, which was conducted orally, the applicant appeared in person while the 2nd respondent enjoyed the services of the learned counsel, Ms. Stella Nyaki. The first respondent was not seen to oppose the application.

In his submission, the applicant adopted the affidavit in support of the application to form part of his submission. In the affidavit, the applicant averred that on various occasions he wrote letters applying for a copy of judgment and decree but he was replied that the tribunal typing had to be done in Nzega as the tribunal was short of typists.

Further, the applicant stated that the typed copy of the judgment was made ready for him on 26/08/2019 the time when he had shifted to Dar es salaam after he had retired from public service in March, 2018.

Moreover, the applicant complained against his former advocate who had been in the conduct of the matter for being non-cooperative and hence delayed in receiving the copy of the judgment.

In paragraph 8 of the affidavit in support of the application, the applicant listed a total of nine (9) issues which he alleges to be illegalities and irregularities apparent in both the proceeding and judgment of the tribunal for the court to consider in granting the application.

On the other hand, Ms. Nyaki objected to the application by stating that the applicant has not shown the letters he wrote when he was requesting to be supplied with a copy of the judgment, she further added that it is not true that the tribunal never gave him the copies timely.

As to the alleged issues of illegalities and irregularities, the learned counsel contended that no judgment of the trial tribunal was attached to the application for the court to consider in ascertaining whether the said issues exist.

Having heard from both camps, the issue is whether the application is meritorious.

Section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] empowers the High Court to extend the time for filing an appeal either before or after the expiration of the period provided for filing an appeal.

Also, it is a principle of law that the grant of an application for an extension of time is at the discretion of the Court. In the case of ***Lyamuya Construction Company Limited vs Board of Trustees Tanzania Young Women Christian Association of Tanzania, Civil Application No. 02 of 2010***, the Court of Appeal of Tanzania formulated

four factors to be considered by courts before granting an extension of time, that is: -

1. *The applicant must account for all the periods of delay,*
2. *The delay should not be inordinate;*
3. *The applicant must show diligence not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
4. *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged.*

In this application, the applicant has stated in his affidavit that the main reasons for his delay are that the trial tribunal delayed in supplying him with a copy of the impugned judgment and that the advocate who was holding the matter was not cooperative in the conduct of the matter.

According to section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019], the applicant ought to have filed his appeal to this Court within 45 days from the date judgment was delivered, but he complains that the District Land and Housing Tribunal did not issue copies of the judgment in time so that the applicant could appeal within the prescribed time.

In the instant application, the applicant ought to have attached letters that he wrote to the tribunal for the court to be sure of his complaint:

However, no evidence of the alleged letters was presented by the applicant to demonstrate his diligence; rather, it was only by word of mouth that he wrote several letters to the tribunal requesting a copy of the judgment.

Another reason that he shifted to Dar es salaam after retiring from public service cannot be entertained by this court as a reason for a delay of more than two years.

As to the alleged illegalities and irregularities in the proceedings and judgment of the trial tribunal; the respondent's counsel rightly submitted that the applicant ought to have attached a copy of the impugned judgment so that this court could point out the alleged illegalities and irregularities. Since the applicant failed to attach a copy of the judgment to this application, the court can not say a word on the alleged illegalities other than to disregard the ground.

The applicable law in this country is that the applicant for an extension of time must account for each day of delay. If that is not done, then there could be no point in having rules prescribing periods within which certain steps have to be taken. I subscribe with the second respondent's counsel that the applicant has failed to account for each day of delay as required by law.

In view thereof, I hereby dismiss the application with costs.

Order accordingly.



A. BAHATI SALEMA
JUDGE
21/10/2022

Court: Ruling delivered under my hand and seal of the Court in the Chamber, this 21st day of October, 2022 in presence of both parties via virtual court.



A. BAHATI SALEMA
JUDGE
21/10/2022

Right to Appeal is hereby explained.



A. BAHATI SALEMA
JUDGE
21/10/2022

