

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**MISC. LAND APPLICATION NO. 22 OF 2022**

*(Arising from District Land and Housing Tribunal for Tabora  
in Land Application No. 49 of 2014)*

**DAVID SAMSON BUTEMBA..... APPLICANT**

**VERSUS**

**COSTANTINE COSMAS KIHALIYE..... RESPONDENT**

**RULING**

*Date of last order: 02.11.2022*

*Date of Ruling: 30.11.2022*

**KADILU, J.**

This is an application for extension of time to file appeal out of time against the decision of DLHT for Tabora in Land Application No. 49 of 2014. The application is made under s. 41(2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019]. It is supported by an affidavit of the Applicant which consists of the following grounds:

- 1. That, the applicant was the 3<sup>d</sup> respondent in the Land Application No. 49 of 2014 which was decided in favour of the respondent herein.*
- 2. That, the applicant was not satisfied by the said decision which was delivered on 1/8/2016.*

3. *That, the applicant intended to appeal against the said judgment within time whereas the copy of judgment which could help him to file an appeal was not given in time.*
4. *That, the applicant on his effort to file an appeal within prescribed time, on 11/9/2014 he wrote a letter to the DLHT requesting for certified copy of the proceedings, but he was unsuccessful.*
5. *That, on 9/10/2016 when the applicant was continuing to pursue his application, his relative passed away. He had to stop application processes and mourn for his relative.*
6. *That, the applicant filed Application No. 103 of 2017 seeking extension of time to appeal in this court, but before the application was heard he was arrested and charged with criminal case No. 525 of 2017. He was imprisoned for 3 months.*
7. *That, he filed criminal appeal No. 4 of 2018 challenging his conviction and sentence.*
8. *That, on 6/8/2018 the appeal was decided in his favour and he was set free.*
9. *That, after his release he made an application to restore Application No. 103 of 2017 in this court, but the same was struck out for the reason that the applicant had cited a wrong provision of the law.*
10. *That, the ruling for Application No. 103 of 2017 was made on 15/7/2022.*
11. *That, this application was filed on 27/7/2022 after the earlier application was struck out by this court.*

During the hearing of this application, the applicant appeared in person (without representation) while the respondent enjoyed legal services of Mr. Kelvin Kayaga, learned Advocate. When the applicant was called to submit his application, he basically restated the contents of his affidavit and prayers as contained in chamber summons. Mr. Kelvin sworn a counter affidavit on behalf of his client opposing the application. He contended that the applicant never wrote a letter to the DLHT requesting for certified copies of judgment and proceedings.

He averred further that the application is not justified because the applicant's relative who passed on was not identified in the affidavit and there is nothing concrete to suggest that the applicant could not take any step for the period of 8 months. The learned Advocate stated that the applicant's earlier application was struck out on 01/8/2018 for want of prosecution before he was convicted by the primary court on 05/8/2018. He stayed in custody for 3 months only therefore, his failure to prosecute the said application was caused by his own lack of diligence. He prayed the application to be dismissed for lack of merit.

Mr. Kelvin told the court that the applicant did not attach the alleged letter which he wrote to the DLHT to request for certified copies of judgment and proceedings, nor did he tell the date in which he obtained such copies. He thus argued that in that situation, the court cannot appreciate the extent of delay occasioned by not obtaining the certified copies in time. The learned Advocate stated that the applicant asserts that he was bereaved, but he did not show any proof to that effect. The condolence collection form, the

Advocate said, is never a proof of death known in law. He maintained that the application has no merit therefore, it has to be dismissed with costs.

Upon a careful perusal of the affidavits and submissions made by the parties, the question which I am now required to determine is whether the present application has merit. As per the records, judgment was pronounced on 1/8/2016 and the instant application was filed on 27/7/2022, more than five (5) years after the date of decision.

I am mindful that the court has discretion to grant extension of time in these kinds of applications, but I am also aware that such discretion is supposed to be exercised judiciously. This is to say, the discretion should be exercised in accordance with the rules of reason and justice and not arbitrarily. The case of *Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 (unreported), is a landmark case in Tanzania as far as applications for extension of time are concerned. In that case, the factors to be considered by the court in determining any application for extension of time were laid down. The factors are that **firstly**, the applicant should account for all the days of delay. **Secondly**, the delay should not be inordinate. **Thirdly**, the applicant should have shown diligence and not apathy, negligence or sloppiness in the action that he intends to take. **Fourthly**, if the court feels that there are other reasons such as existence of the point of law or illegality in the decision being challenged, it may grant the extension of time.

In the present application, the delay was for a duration of more than five (5) years. There is no dispute that the delay is an inordinate one. Given the circumstances, the applicant was expected to give concrete reasons and proof in establishing a good cause for the delay. In doing so, the law requires him to account for each day of delay. I would hasten to state that the applicant has failed to do so. In the first place, the applicant asserts that the delay was caused by failure to obtain certified copies of judgment and proceedings in time, but even at the time of this application, the said copies were not yet obtained and attached.

As correctly observed by Advocate for the respondent, the applicant did not show proof of the letter which he wrote to the DLHT to be supplied with a copy of judgment. His letter dated 11/9/2014 was for the request of the proceedings of Land Application No. 49 of 2014 which was ongoing in the DLHT. By then, the applicant could not request for a certified copy of judgment because the case was in progress. In addition, the applicant does not state the date in which he obtained the certified copy of judgment. The same was not attached in his application. During the hearing of the application, he told the court that he has not yet collected the said copy of judgment.

Under the provisions of s. 19 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019], the days spent in obtaining copies of judgment and decree are not considered in computing the limitation period. As such, the applicant could still appeal to this court if at all he had applied for and supplied with certified copies of proceedings and judgment.

The other reason for delay as elaborated by the applicant is that he was bereaved by his brother-in-law. However, the applicant did not show any proof of that fact. Death of any person is proved by death certificate, not a mere form showing that condolences contributions were actually collected. Moreover, there were eight (8) months from when the applicant was bereaved to the date in which this application was filed. That long period cannot be considered as time for mourning in which the appellant was just idle.

He further contented that he was involved in the criminal case which led to his imprisonment. But the offence for which he was charged with was bailable and indeed, he was released on bail. He did not tell the court the efforts that he managed to undertake in pursuing his appeal. In addition, the imprisonment was for three (3) months only among the entire duration of five (5) years that he delayed in filing his appeal. Generally, the applicant did not account for each day of delay. He also failed to show diligence because his earlier application which was filed well within time was struck out for wrong citation of the law.

This too is a form of negligence as he carelessly cited wrong provisions of the law. He alleged that bereavement and imprisonment prevented him from pursuing his appeal timely, but between the year 2019 and 2021 he managed to prosecute civil case No. 3 of 2019 in the district court of Tabora and civil appeal No. 9 of 2019 in the High Court of Tanzania at Tabora. All these demonstrate that the applicant was not vigilant in pursuing his appeal

or he is pursuing it frivolously and vexatiously. In totality, the applicant has not shown a good cause for the delay as required by the law.

In view of the foregoing, I find that this application lacks merit. It is therefore dismissed with costs.

**Order accordingly.**

  
KADILU, M. J.

**JUDGE**

30/11/2022.

Ruling delivered on the 30<sup>th</sup> Day of November, 2022 in the presence of Mr. David Samson Butemba, the applicant and Mr. Kelvin Kayaga, Advocate for the Respondent.



  
KADILU, M. J.

**JUDGE**

30/11/2022.