

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

MISC. APPLICATION No. 116 OF 2022

*(Originating from District land and Housing tribunal for Arusha at Arusha Application
No. 11 of 2019)*

WAZIRI MATOGOLO..... APPLICANT

VERSUS

THE SCHOOL OF ST. JUDE..... RESPONDENT

RULING

9th November & 2nd December, 2022

TIGANGA, J.

This application is in this Court seeking for extension of time within which the applicant can be allowed to file an appeal to this Court. The intended appeal is aiming at challenging the judgment and decree of the District Land and Housing Tribunal for Arusha at Arusha herein to be referred to as the "DLHT" rendered in Application No. 11 of 2019.

The application was brought under the provisions of Section 41(2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019], and Section 14(1) of the Law of Limitation Act, [Cap. 89 R.E 2019]. It is by chamber

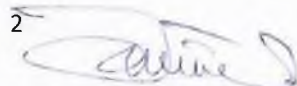


summons which is supported with the affidavit sworn by Rachel S. Mweanyekule, the Learned Advocate.

However, the application was opposed by the respondent via the counter affidavit sworn by Laurian Stanslaus Mrema, Facilities Manager of the respondent school. Owing to that, the court called the parties to submit on the application for and against.

During hearing, Ms. Rachel I. Mwainyekule, Learned Advocate represented the applicant whereas Ms. Rehema Arnold Kitaly appeared for the respondent. Reading from the affidavit and submission by Ms. Rachel, the reason for delay for filing the appeal was due to sickness of the Advocate's mother who was engaged by the applicant to take care of the matter. This reason is shown under paragraph 8 of the affidavit sworn by the Advocate herself.


On this ground, the Advocate argued that, while on preparation of the documents in order to appeal to this court her mother fallen sick and therefore, she was required to travel to Tanga to nurse her mother. She said, the ruling by the DLHT was delivered on 30th June, 2022 and the copy of ruling was issued on 13th July 2022.

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Ms. Kitaly, in her submission supported by the counter affidavit disputed the facts alleged in the affidavit, submitted that, the applicant's Advocate did not attach medical chits to prove that her mother was sick. However, the fact of the attachments of the receipts to and from Tanga were noted in the counter affidavit. She said, that the applicant did not show good cause and failed to account for each day of delay as required by the law.

I have examined the application, the opposing affidavit and submissions made by both Advocates very thoroughly. It is not disputed that the impugned ruling was delivered on 30th June, 2022. The applicant wrote a letter to the DLHT requesting for the copy of ruling and proceedings on 01st July, 2022 and it was received in the DLHT registry on the same date. It is also evident that, it is supported by the record even though the respondent's advocate disputed it for the reason of not being served with the same latter. The copy of ruling was issued to the applicant on 13th July, 2022. In the circumstance of this nature obviously section 19(2) of Law of Limitation Act, [Cap. 89 R.E 2019] comes into play. It provides:

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an



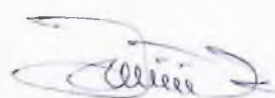
application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."

The requirement of the above law cited above was reemphasised and interpreted by the Court of Appeal of Tanzania in the case of **Registered Trustees of the Marian Faith Healing Center @ Wanamaombi vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007 (Unreported); where it was held 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."

Not only that, but also the stress was put in the case of **Valerie McGivern vs. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019, CAT at Tanga, (Unreported) that:

"...Suffice to say, section 19 (2) of LLA and the holding of the decision cited above reinforce the principle that computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced the appellants obtains a copy of decree or order appealed by



excluding the time spent in obtaining such decree or order. However, it must be understood that section 19 (2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of an appeal."

Thorough passing through the above cited law and case laws, vividly, it intimates that when computing for days of appeal and the like, days under which the applicant was waiting to be supplied with the copy of ruling and proceedings are excluded in reckoning days within which to file an appeal. The applicant was issued with the copy of ruling on 13th July, 2020. Standing on the above laws, counting the days which he was legally bound to file the appeal starts from 13th July, 2020.

According to Section 41(2) of the Land Disputes Act (supra), the days set for appealing against the decision originating from the DLHT when exercising its original jurisdiction is 45. The law provides:

"An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:"

That being the case, counting from 13th July 2020 up to 19th August 2022 when the application was filed according to the exchequer receipt which is a guiding yardstick in computing days in matters of this



nature, only 38 days had elapsed. This is to say, the applicant was within time to file his appeal.

For that reason, this application is misconceived because it was filed while in fact the applicant still had time to file the appeal. On that basis, and taking into account the reasons that days have lapsed while pursuing this application which was misconceived. I thus extend time for 14 days from the date of this order within which the appeal should be filed.

Given the circumstances of this application, cost shall follow event in the intended appeal.

It is accordingly ordered.

DATED at **ARUSHA**, this 02nd day of December, 2022




J. C. TIGANGA
JUDGE