

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

MISC. LAND APPLICATION No. 5 OF 2021

(Arising from Land Application No. 12 of 2016, District Land and Housing Tribunal
for Morogoro District at Morogoro)

MWAJUMA MOHAMED KALASA..... APPLICANT

Versus

1. ARMANDO KAZANA

2. THE DIRECTOR OF MOROGORO MUNICIPALRESPONDENTS

3. DORIS ERNEST LEMA

RULING

S. M KALUNDE, J.

The application at hand is preferred by way of chamber summons wherein the applicant is seeking to extend time within which to lodge an appeal out of time against the judgement and decree of District Land and Housing Tribunal for Morogoro at Morogoro (henceforth "the tribunal") in Land Application No. 12 of 2016. The application is made under Section 41(2) of **the Land Disputes Courts Act [Cap 216 R.E 2019]** (henceforth "the LDCA") and is supported by affidavit that was sworn by, **MWAJUMA MOHAMED KALASA**, the applicant. The application was resisted by two counter affidavits duly sworn by **MR. ALSON KIRERE**, learned State Attorney for the second respondent, also, that sworn by the third respondent, **DORICE ERNEST LEMA**, the third respondent.

Briefly, the facts which steered this application as follows: On 14.01.2016, the applicant lodged Land Application No. 12 of 2016 at the tribunal praying for the following orders: a declaration that she is a lawful owner of the disputed land and costs of the case. After the full trial, on 28.07.2021, the tribunal delivered its verdict in favour of the respondents. The applicant was aggrieved by the said decision. Being out of time the applicant lodged the present application seeking to extend time withing which to lodge the appeal out of time.

Hearing of the application was conducted through written submissions. Submissions of the applicant were prepared by MR. ELIPIDI EUGENI TARIMO, learned counsel, and those of the 3rd respondent were drawn and filed by MR. CHRISTOPHER MGALA learned counsel. The 2nd respondent did not file their submissions since on 16.02.2022 through MR. AHAMED SAID MKOMWA, learned State Attorney, they intimated that they were supporting the application. The 1st respondent on the other hand was reportedly deceased, and no efforts were made to join the administrator within time.

Having gone through the submissions made by the parties, the issue for my determination is whether, through his chamber summons, affidavit and submissions, the applicant has been able to demonstrate any **"good cause"** to warrant condonation in terms of 41(2) of the LDCA. The said section reads:

"41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of

its original jurisdiction shall be heard by the High Court.

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

*Provided that, the High Court may, **for the good cause, extend the time** for filing an appeal either before or after the expiration of such period of forty five days." [Emphasis is mine]*

In terms of the above section the limitation period for lodging an appeal is forty five days after the date of the decision or order. The records in this case indicate that the impugned decision was delivered on 28.07.2021. The present application was lodged on 27.10.2021. Now, the issue for my determination is whether there some genuine reasons for delay.

In support of the application Mr. Tarimo argued that as soon as the decision was delivered on 03.08.2021 the applicant applied to be supplied with copies of the impugned decision. The letter applying for the decision was annexed to the affidavit filed in support of the application. having applied for the said copies, the applicant persistently visited the tribunal to see whether the copies were ready in vain until she was supplied with the same on 20.09.2021. It was at this point that the copies of the impugned decision were dated 20.08.2021. on being supplied with copies the applicant commenced a process to obtain legal services to prosecute her case. She approached Morogoro Paralegal Centre for legal assistance. However, she was referred to the

Tanganyika Law Society (TLS) Morogoro Chapter for legal assistance. The transfer to TLS was on 22.09.2021. by this date she was late by almost 10 days.

The counsel for the applicant argued that delay in being supplied with of copies of Judgment and decree constituted good cause for extension of time. In support of this view, he cited the case of **Abusisye Kamela vs Yoel Manko & Another**, Misc. Application No. 465 of 2020 (Unreported). In addition to that the counsel argued that after being supplied with copies the applicant, a lay person, started to look for legal aid. He also prayed the period spent in looking for legal aid to be discounted. To support this contention the counsel cited the decision of this court in the case of **Mase Simon Rhonin vs Green Star English Medium School**, Misc. Labour Application No. 9 of 2020 (unreported). In view of the above submissions the counsel invited this Court to find that the applicant has demonstrated "good cause".

In reply, the counsel for the respondent adopted the content of the counter affidavit filed in support of the application. At the outset the counsel stated that it was the discretion of the Court whether or not to grant the application. He added that the discretion was to be exercise based on circumstances of each case. For this he cited the case of **Mary Mchome Mbwambo & Amos Mbwambo vs Mbeya Cement Company Ltd** [2017] TLR. The counsel went on to state that the applicant was expected to account for all the period of delay; demonstrate diligence, and not negligence or sloppiness oh her part; show whether there is an arguable case on point of law; and show the degree of prejudice to the respondent. In support of this view the

counsel cited the case of **Joseph Raphael Kimaro & Another vs Republic** (Criminal Application 54 of 2019) [2020] TZCA 174 (26 March 2020).

In view of the above authorities, the counsel argued that the applicant has failed to account for each day of the delay. In support this contention the counsel argued that the copies of the impugned decision were ready for collection on 20.08.2021, twenty four (24) days before the expiration of the forty five days. In his view the applicant has failed to account for each day of the delay. He cited the case of **Dr. Ally Shabhay v. Tanga Bohara Jamaat** [1997] TLR at page 305 to 306 for an argument that applicants must show diligence and not show unnecessary delay in approaching the Court. The counsel prayed that the application be dismissed with costs.

Having presented the above arguments, I think it now behoves this Court to resolve the question whether the applicant has demonstrated good cause. As correctly argued by both parties, what amounts to good cause depends on the circumstances of each case. With that in mind it is important to note that there are no hard or fast rules to what can constitute good cause.

In the present case, there is no dispute that the decision sought to be challenged was delivered on 28.07.2021. Available evidence shows that immediately thereafter on 03.08.2021 the applicant applied to be supplied with copies of the impugned decision. The copies were not supplied to her until on 20.09.2021. However, on being issued with the same she noted that it was dated 20.08.2021. Admittedly, the said decision is dated 20.08.2021. While the position of the law is that an

appeal must be lodged within forty-five days from the date of the decision. It is also settled that in calculation of the period of limitation, the time spent awaiting certified copies of the impugned decision is to be excluded. This is according to the provisions of section 19 of of **the Law of Limitation Act [CAP. 89 R.E. 2019]** ("the LLA") which reads as follows:

*"(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.**" [Emphasis is mine]*

There is uncontroverted evidence that the applicant applied on time to be supplied with copies of judgment and decree of the impugned decision. This is supported by a letter attached to her affidavit. She also stated that she kept following up the matter at the tribunal in vain. She was eventually supplied with the copies on 20.09.2021. The respondent on the other hand did not provide any evidence that they were able to collect the said decision on an earlier date. Since the applicant made a formal application to the tribunal requesting for the said copies, the tribunal was also duty bound to make a formal notification to the applicant informing her of the readiness and availability of the said copies of judgment and decree. In her affidavit the applicant said she made repeated efforts in vain. In absence of any information that she

was notified of the availability of the said decision or that the said decision was readily available at an earlier date and collected by the respondent I see no reason to doubt the promptness and diligence of the applicant. The applicant version is believable. I also wish to point out that, all the applicant was supposed to do was issue a plausible explanation and she did just that in my view. I do not think, by accounting for each day of the delay she was supposed to state what she was doing every day in relation to the matter. When she requested for copies of judgment and decree, it was expected that the tribunal would also return the favour by informing her when the copies were available. In view of the above I am satisfied that the period between 28.07.2021 when the decision was delivered and 20.09.2021 when the applicant was supplied with the said copies ought to be and is here by excluded from the computation of the limitation period.

In view of the above finding, I am of the view that the 45 days for lodging the appeal started to wind down on 21.09.2021 and expired on 05.11.2021 the present application was lodged on 27.10.2021. In view of the above circumstances, I hasten to say that by the time the applicant filed the present application she was well within the prescribed limitation period. She would have as well went ahead to lodge the appeal and should have been accurate. I guess she was just extra diligent and cautious.

Records available before the Court show that upon obtaining the copies of judgment and decree, the applicant, a lay person, endeavoured to seek legal assistance on various legal aid schemes before ending up to the TLS Morogoro chapter. This is supported by

evidence appended to her affidavit. In view of the circumstances, I am convinced that this was also demonstration of diligence on the part of the applicant. In the case of **Michael Lesani Kweka vs. John Eliafye** [1997] TLR 152 the Court held that:

"Extension of time may be granted where party putting forward such plea has shown to have acted reasonably diligently to discover omission and upon such discovery, he acted promptly to seek remedy for it."

That said, I am convince that the applicant has demonstrated "good cause" sufficient for this Court to exercise its powers in granting the orders sought. The application succeeds. The applicant is to lodge the intended appeal within twenty-one (21) days from obtaining certified copies of this decision. Given the circumstances, each party shall cover their own costs.

It is so ordered.

DATED at MORORORO this 24TH day of NOVEMBER, 2022.




S. M. Kalunde

JUDGE