

**“ORIGINAL”**

**IN THE HIGH COURT OF TANZANIA  
TANGA DISTRICT REGISTRY  
AT TANGA**

**MISC. LAND APPLICATION NO. 19 OF 2021**

**(Arising out of Misc. Land Application No. 34 of 2020, District Land and Housing  
Tribunal for Korogwe, original Land Case No. 25 of 2019, SINDENI WARD  
TRIBUNAL)**

**SAIDI MWELOME.....APPLICANT**

**VERSUS**

**TEME SAIDI..... RESPONDENT**

**RULING**

Date of Ruling- 20/04/2022

Mansoor, J:

The applicant filed an application under Section 38 (1) of the Land Disputes Courts Act, Cap 216 R: E 2002. He prays for extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Korogwe delivered on 15<sup>th</sup> December, 2020 in Land Appeal No. 34 of 2020. The present application was filed on 13<sup>th</sup> May, 2021, a delay of almost four months. The reason for delay is shown in the



**“ORIGINAL”**

affidavit of the applicant in support of the application. The applicant says he applied for copies of judgement but he received them copies very late and after a serious follow up. He was availed with a copy of judgement on 3<sup>rd</sup> May, 2021 and promptly on 13<sup>th</sup> May, 2021, he filed the present application in court after being availed with the Legal Assistance of the Legal and Human Rights Centre.

The application was vehemently resisted by the respondents, as the counsel for the respondent argues that the applicant failed to account for each day of delay and has not availed to court sufficient reasons for the grant of the extension sought. The respondent in his written submissions has cited a number of cases, and in particular, the case of **Hamisi Mohamed (The Administrator of the Estate of Risasi Ngawe) vs Mtumwa Moshi ( the Administrator of the Estate of the Late Moshi Abdallah), Civil Application No. 407 of 2019** (unreported), and the case of **Yusuph Same and another vs Hadija Yusuph, Civil Appeal No. 1 of 2002**, and

**“ORIGINAL”**

insisted that the applicant has failed to demonstrate sufficient cause for the delay, and has failed to account for each day of delay, and stated that the allegations that the District Land and Housing tribunal has delayed supplying him with the copy of judgement has not been substantiated as the Applicant did not state as to when he as furnished with the copy of Judgement and Decree by the District Land and Housing Tribunal.

After careful consideration of the facts deposed in the affidavits filed in support of the application coupled with the detailed arguments made by the learned counsel for applicant and respondents, the test to be considered here is whether there was a sufficient cause for the delay to file an application for extension of time to file the appeal.

In the case of **Yusuph Same and Another V. Hadija Yusuf, Civil appeal No. 1 of 2002, Unreported**, decisions of the court of appeal, it held:

*“The term sufficient cause should not be interpreted narrowly but should give a wide interpretation to encompass all reasons or causes which are outside the applicant’s power to control or influence resulting in delay in taking any necessary step”.*

This Court has jurisdiction under Section 38 (1) to extend time for filing an appeal against the decision or order of the District Land and Housing Tribunal exercising its appellate or revisional jurisdiction.

Where there is sufficient cause, it is inappropriate to deny a party extension of time where such denial will result in stiffing the rights of the parties. See the case of **Mobrama Gold Corporation Limited vs Minister for Energy and Minerals & 2 others (1998) TLR No. 225**, it was held:

## **“ORIGINAL”**

*"It is generally inappropriate to deny a party an extension of time where such denial will stiff his case as the respondent's delay does not constitute a procedural abuse or contemptuous default, and because the applicant will not suffer any prejudice, an extension of time should be granted."*

The counsel for the respondent argued that the applicant was simply negligent in getting the copy of judgement in time and he should not blame the Tribunal for his own negligence. I heard his arguments and carefully considered the circumstances of the case.

Section 38 cited in the chambers summons deals with appeals which originated from the Ward Tribunals. Section 38 (1) of the Land Disputes Courts Act CAP 216 RE. 2002 which vest the High Court with discretion in the following terms:

- (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in

the exercise of its appellate or revisional jurisdiction,

May within sixty days after the date of the decision or order, appeal to the High Court (Land Division): provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.

Reading between the lines of Section 38 (1) the appeal must be filed within 60 days of the date of the decision and there is no requirement of attaching a copy of judgement or decree in the Petition of Appeal. The law is clear that the appeal should be filed within sixty days after the date of the decision or order. There is no provision of law which requires the Applicants to attach copies of judgment, decree, and proceedings. Section 38(2) of the Land Disputes Courts Act provides that the appeal shall be by way of petition and shall

## **“ORIGINAL”**

be filed in the District Land and Housing Tribunal from the decision or order of which the appeal is brought. Under subsection (3), the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal to the High Court (Land Division). Thus, it is the duty of the District Land and Housing Tribunal and not the Applicant/Appellant to forward the proceedings, including the judgment and decree, to the High Court. Thus, the excuse of being supplied late with a copy of decree or judgement cannot amount to a sufficient cause for granting an extension of time.

Again, it is settled position of the law that, in an application for extension of time, the applicant must account for every day of the delay: See- **Bariki ISRAEL VS. The republic, Criminal Application No. 4 of 2011(unreported)**.

**“ORIGINAL”**

However, I have considered the position of the Applicant, he is a lay person, and from remote areas whose access for justice is minimal, who has been misdirected by the Court Staff that he must await for the copies of judgement to enable him to appeal, this was the wrong advice and the Applicant being a lay person relied on the false advice. He follows up and was supplied with the copies very late. Again he had to find the assistance from the Legal and Human Rights Centre as he was in dire need to find justice, and as held in the above cited case, the right of appeal is the fundamental right to the party, and a denial of the right will stifle his efforts to find justice, it is only for these reasons and since the applicant has shown that the intended appeal is not frivolous and the respondents will not be unduly prejudiced if the appeal shall be heard on its merits, I allow the application for extension of time to file an appeal against the order/ruling of the District Land and Housing Tribunal for Korogwe at Korogwe delivered 15th December, 2020, and the applicant is hereby granted 30 days from the date of this order to file the Appeal.

A handwritten signature in black ink, appearing to be 'J. M. M.' or similar, written in a cursive style.

**“ORIGINAL”**

Application allowed, with no orders as to costs.

**DATED AND DELIVERED at TANGA this 20<sup>th</sup> day of APRIL 2022**



  
**L. MANSOOR**

**JUDGE**

**20<sup>TH</sup> APRIL 2022**