

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

MISC. LAND APPLICATION NO. 47 OF 2020
(Arising out of Misc. Land Application No. 30 of 2014, District Land and Housing Tribunal for Korogwe)

MICHAEL MAHIMBO.....APPLICANT
(The administrator of the estate of the Late Agustino Samuel Mahimbo)

VERSUS

SALEHE OMARY KATUKWA.....1ST RESPONDENT

KHALID ZUBERI NDAGO.....2ND RESPONDENT

PILI NDAGO.....3RD RESPONDENT

ASHA ZUBERI NDAGO.....4TH RESPONDENT

MKUMBUKWA KILUA NDAGO.....5TH RESPONDENT

SERIKALI YA KIJIKI CHA LUYE.....6TH RESPONDENT

RULING

Date of Ruling- 12/04/2022

Mansoor, J:

The applicant filed an application under Section 41 (2) 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 4th December 2018 in Land Application No. 30 of 2014. The



present application was filed in this Court on 24th August 2020, almost 18 months after the date of the decision. The reason for delay is shown in the affidavit of the applicant in support of the application. The applicant says he applied for copies of judgement but never received it, and on 28th January 2019, he was told by the Tribunal that the file is misplaced. The applicant decided to engage an advocate for making the follow up, but still the file could not be located. The applicant avers that he filed the application for extension of time before this Court on 5th February 2019, but the Deputy Registrar refused to admit it since it was not accompanied by the copy of judgement. Then the efforts to find the file was done and on 4th March 2020, the Advocate for the Applicant was notified by the Tribunal in writing that the file has been found. This letter is annexed to the application as Annexure P-1 to the affidavit of the applicant.

Then, after receiving a copy of judgement, the Advocate for the Applicant started to look for the Applicant on his physical address as he could not get him on the phone and managed

to find him on 13th August 2020. On 14th August 2020, the Applicant instructed his counsel to lodge this present application for extension of time to file the appeal. The applicant blames the Trial Tribunal for the delay, and says the delay is not out of negligence or inaction on his part or on the part of the advocate.

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 from 2nd May 2020 till the date, he filed the application in court. That the file was located on 2nd May 2020, but the present application was filed three months later, and the Applicant failed to explain why he delayed for three months. Also, as stated in the affidavit of the Applicant, the Counsel found the Applicant on 14th August 2020, but he filed this application on 24th August 2020, thus failing to account for almost 10 days of delay.

The Counsel for the Respondents also challenged the contents of the affidavit stating that all what is stated in the affidavit of

the applicant is hearsay, and not backed with any evidence, and the court cannot act on bare assertions of the applicant's counsel lacking proof. She said, the allegations that the Deputy Registrar refused to admit his application, in 2019, is not supported by the evidence of either the order of rejection by the Deputy Registrar or the affidavit of the Deputy Registrar, and the assertions that he could not get his client on the phone from May till August 2020 is not supported by any proof. The Counsel argues that in any case, the applicant was not required by section 41 (1) of the Land Courts Disputes Act, to attach a copy of Judgment when applying for extension of time.

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. It be noted that the delay is of almost 18 months.

In the case of **Benedict Mumello V. Bank of Tanzania, civil appeal No. 12 of 2012 and 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”.

Before I indulge whether there was a sufficient cause for the delay, let’s see the requirements of Section 41 (1) and (2) of the Land Disputes Courts Act, to see whether there is a requirement of attaching a copy of Judgement in the Petition of Appeal.

Section 41(1) and (2) of the Land Disputes Courts Act, Cap 216 Re: E 2002 provides that: -

Section 41 (1) "Subject to the provisions of any law for the time being in force all appeals, revisions and similar proceedings from or in respect of any proceedings in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

41 (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 good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days" [Emphasis added].

It may be relevant at this stage to note that the appeal under the Land Disputes Courts Act is governed by the Land Disputes Court Act, Cap 216 R: E 2019 and the Civil Procedure Code does not apply unless there is a lacuna. Under the Civil

Procedure Code, it is a mandatory requirement that every memorandum of appeal to be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded. This is provided under Order 39, Rule 1, Civil Procedure Code and Order 39 Rule 3 of the CPC entitles the Court to reject the memorandum of appeal where the memorandum of appeal is not accompanied by a copy of decree and judgement. The position is not the same under Section 41 (2) of Cap 216, there is no requirement under this section to attach a copy of the decree or judgement in the Memorandum of Appeal. The Appellant is simply required to present the Petition/Memorandum of appeal setting out precisely the grounds of appeal within forty-five days from the date of the decision. The Law of Limitation Act prescribes the conditions under which the Court may condone the delay in filing the appeal. Section 19 (2) of the Limitation Act provides

S. 19 (2) "In computing the period of limitation prescribed for an appeal, an application for

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

This applies only on appeals under the Civil Procedure Code, not appeals falling under the Land Disputes Courts Act, as in that law there is no requirement to attach a copy of either decree or judgement with the Memorandum of Appeal.

That apart, the stories of the Counsel for the Applicant that he delayed filing an appeal because the file was misplaced or lost, that cannot be sufficient cause as he was required to file the appeal without attaching a copy of Judgment and Decree, and the finding of the records of the lower Tribunals would have been the job of the Appellate Court, and not the Appellant. Again, the allegations that the applicant applied for

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extension of time in February 2019, but the Deputy Registrar refused to admit it or had rejected it, this is a mere assertion lacking proof, as the applicant failed to exhibit in court the order of rejection by the Deputy Registrar or even the file number in which the application was registered. Therefore, the applicant failed to advance enough reasons for delaying filing an appeal, he failed to explain each day of delay of the period of over 18 months from the date the decision he intends to appeal from was pronounced.

In the result, the application lacks merits, and it is hereby dismissed with costs.

Application dismissed with no order as to costs since the parties come from very remote areas, with very low income.

DATED AND DELIVERED at TANGA this 12th day of APRIL 2022



A handwritten signature in black ink, appearing to read "L. Mansoor", is written over the printed name.

L. MANSOOR

JUDGE

12TH APRIL 2022