

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 43 OF 2021

(Originating from Land Application No. 168 of 2014 in the District Land and Housing Tribunal of Arusha at Arusha)

KAROLIEN REGINALD MARIKI 1ST APPLICANT

GLAYWASHINGTON MARIKI 2ND APPLICANT

VERSUS

BUNTO JUMA BUNTO RESPONDENT

RULING

06/12/2021 & 17/01/2022.

KAMUZORA J.

The applicants herein; Karoline Reginald Mariki and Glaywashington Mariki preferred this application seeking for extension of time to appeal to this court against the decision of the District Land and Housing Tribunal of Arusha (the tribunal) in Application No. 168 of 2014 that was delivered on 15th March 2021. The application was brought under the provision on section 41(1) (2) of the Land Disputes Court Act, Cap 216 RE 2019, Section 14 (1)(2) of the Laws of the Limitation Act [Cap 89] R.E 2019] and Order IX Rule 9 and section 95 of the Civil Procedure Code [Cap 33 RE 2019]. The application is supported by an

affidavit sworn by Machwa Hanson an advocate authorised to depone on behalf of the applicants. The application was strongly opposed through the counter affidavit deposed by the respondent himself.

During hearing of the application, the applicants were represented by Mr. Francis Walter, learned advocate and the respondent was represented by Ms. Winnie Evarest, learned advocate. Hearing of the application was by way of written submission and parties filed their submissions in accordance with the schedule.

Briefly, the respondent sued the applicants in the District Land and Housing Tribunal vide Application No. 168/2014 alleging that the applicants were trespassers to the respondent's land and the judgment was made in favour of the respondent. The applicants were dissatisfied with the tribunal decision but was unable to take action on time hence preferred this application seeking for an order of this court enlarging time to appeal. The main issue calling for the determination by this court is whether the applicants demonstrated sufficient reasons for the grant of this application.

Submitting in support of the application Mr. Walter adopted the affidavit in support of the application and submitted that, the wordings of section 14(2) of the Law of Limitation Act requires for the court to be

moved with sufficient cause and the said sufficient cause has never been defined in any provision of the law. Mr Walter referred this court to the case of **Godwin Ndewesi and Kroli Islungume Vs Tanzania Audit Corporation** [1995] TLR 200 which provides that there are no hard and fast rules on which the court can exercise its discretion but depends on the circumstance of each particular case.

Submitting on the application at hand Mr. Walter stated that, the reasons for the delay in filing the appeal on time was due to the delay in supplying to the applicants the copies of decree. He was of the view that copy of decree is a necessary document to accompany the memorandum of appeal for the purpose of lodging the appeal as required by the provision of Order XXXIX of the Civil Procedure Code Cap 99 RE 2019. Mr Walter submitted that the time limit starts to run on the date that the applicants is furnished with the copy of judgment and decree. He cited section 19(2) of the Law of Limitation Act Cap 89 R.E 2019, Section 53(2) of the Interpretation of Laws Act Cap 1 R.E 2019 as well as the case of **Valerie Mcgiven vs Salim Farkrudin Balal** Civil Appeal No. 386 of 2018. To him, the applicants were not negligent but diligently followed up the said documents by writing a letter to the Tribunal.

Mr. Walter also submitted on the illegality on the part of the decision sought to be challenged as another reasons for extension of time in reference to the case of **Lyamuya Construction Company limited vs Board of Trustee of Young women's Christian Association of Tanzania full citation**. He explained that the chairman instigated on investigation of exhibits by the forensic bureau without any person from the tribunal or officer from the bureau or from the land office giving evidence on oath to determine the genuiness of the tittle.

Based on the above submission the applicants urged this court to regard that the application has merit and that the applicants had adduced sufficient reasons for the extension of time thus the application be granted with costs.

In opposing the application Ms. Winnie submitted for the respondent that, the application was based on the fact that the applicant was not served with copies of the judgment and decree until 06/05/2021. She was of the view that pursuant to section 41(1)(2) of the Land Disputes Courts Act Cap 216 the appeal may be lodged within 45 days from the date of the decision or order and the High court may for the good reasons, extend the time for filing an Appeal either before

or after expiration of such period of 45 days. She then submitted that, the date of the decision as per the available copies of judgment is 15/03/2021 where time limits run up to 03/04/2021. That, since the said copies were not available, enlargement of time ought to have been counted from 15/03/2021 and not on 06/05/2021 when the judgment was certified by the tribunal.

Ms. Winnie explained that the current application was filed on 02/07/2021 while the applicants were availed with copies of judgment on 06/05/2021. That, counting from that date, there is a delay of 10 days of filing the appeal that the applicants have not accounted for. She insisted that there was negligence on the part of the applicants in preferring the appeal on time. To cement her submission, she cited the case of **Dar es Salaam City Council vs. S. Group Security Company Limited**, Civil Application No 234 of 2014.

Ms. Winnie was of the view that the applicants were negligent in pursuing his appeal and failed to account for the days of delay. On the claim that the applicants that there were efforts made towards the Tribunal to obtain copies of decree and judgment, the counsel for the respondent submitted that a letter showing that efforts was not attached to the affidavit rather to the submission in chief by the counsel for the

applicants. She referred that letter as new evidence not admissible and thus prayed that the application be dismissed as it has no merit.

In a brief rejoinder Mr. Walter reiterated his submission in chief and added that, computation of time starts to run after all documents have been supplied to the applicants and not only when the judgment is supplied to the applicants.

Now turning to the application at hand, the grant of extension of time is a matter of discretion of the court, the discretion which however must be exercised judiciously. In **Mbogo Vs. Shah [1968] EA 93**, there are factors highlighted to assist the court in deciding to either grant or refuse to grant extension of time. It was held that: -

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the **length of the delay, the reason for the delay**, whether there is an **arguable case** on the appeal and the **degree of prejudice** to the defendant if time is extended".*

The Court of Appeal of Tanzania also formulated the guidelines to be considered in granting the extension of time in the case of **Lyamuya Construction Company Limited V Board of Registered Trustees**

of Young women's Christian Association of Tanzania, Civil
Application No. 2 of 2010 (Unreported). The court held that: -

"On the authorities however, the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

In the case at hand the applicants have relied on two reasons for the extension of time, one being the issue of not being availed with certified copies of judgment and decree on time and the other reason being the illegality of the impugned decision.

Regarding the first reason, the applicants' counsel demonstrated the reasons for the delay in the affidavit in support of the application and the submission by the counsel for the applicants and the following were observed; The impugned judgment of the District Land and

Housing tribunal was delivered on 15/03/2021 and the applicants were supplied with only the certified copy of the judgment 06/05/2021 by the Tribunal and a copy of the decree was not supplied to the applicants. The current application was filed on 01/07/2021 as per exchequer receipt with number EC100962068127IP.

The applicants' counsel in his submission explained the reasons for the delay in filing the appeal being that, the judgment and decree are necessary documents to accompany the applicant's memorandum of appeal. That, the applicants were supplied with the copy of judgment on 06/05/2021 while the statutory time to appeal had lapsed and the decree had never been supplied to them until the time they preferred the present application.

The law under section 19(2) and (3) of the Law of Limitation Act, [Cap. 89 R.E 2019] provides for the automatic exclusion of the period of time spent for obtaining a copy of judgment, ruling, decree or order sought to be challenged. That position was also acknowledged by the Court of Appeal in the case of **Alex Senkoro and 3 o thers vs. Eliambuya Lyfmo (As Administrator of the Estate of Fredrick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 CAT (unreported) it held that,

"We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time."

Being guided by the law and the above authority, the computation of time in this matter starts to run from the date the applicants were availed with copies of certified judgment of the trial Tribunal that is, from 06/05/2021 to 20/06/2021. The provision governing appeal is section 41(2) of The Land Disputes Courts Act [Cap 216 R.E 2019] which provides that application for enlargement of time can be made on or before the expiry of the prescribed time upon good cause shown. However, the applicable procedure on appeal is governed by the Civil Procedure Code Cap 33 RE 2019. Under Order XXXIX Rule 1(1) of the Civil Procedure Code, Memorandum of Appeal is to be accompanied by the copy of the impugned judgment and decree, hence they are necessary documents to be obtained prior to the lodging of an appeal.

With regard to the current application, it is my settled view that there is good reason for the applicants' failure to lodge an appeal on

time. I say so because, there is no dispute that the applicants are yet to be supplied with copy of decree. The applicants demonstrated efforts to obtain the same but ended up on being supplied with a copy of judgment only. As it is a legal requirement for an appeal to be accompanied with copies of decree, non-availing the applicants with the same prevented them from pursuing their appeal on time. With the available facts on records, it cannot be said that the applicants were unable to account for each day of delay or that the applicants were reluctant or negligent or acted in apathy or sloppiness in taking proper action on time. The delay was not inordinate, as there is a delay of only 8 days in exclusion of 26th and 27th June 2021 which are weekend days to which no court operation.


On the point of illegality of the impugned decision, the illegality raised by the counsel for the applicants is that the Chairman instigated on investigation of exhibits by the forensic bureau without any person from the Tribunal or officer from the bureau or from the land office giving evidence on oath to determine the genuineness of the title. The counsel for the respondent neither made submission opposing this reason nor did submit before this court on the degree of prejudice that will be suffered by the respondent in case the application is granted.

In my view, any party who is aggrieved by the decision of the court has a right to appeal. Indeed the applicants have shown before this court his intention to appeal against the decision of the trial Tribunal though out of prescribed time. The law gives powers to the court to grant extension of time upon being satisfied that there are good reasons warranting the extension of time. The applicants' delay in filing the appeal was reasonably explained warranting good reason for the grant of extension of time.

I therefore exercise this court's discretion and grant the prayer sought by the applicants. The application is therefore granted with no order for costs. The applicants shall file their appeal within fourteen (14) days from the date of this ruling.

DATED at **ARUSHA** this 17th day of January, 2022




D.C. KAMUZORA
JUDGE