

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO SUB REGISTRY)**

**AT MOROGORO**

**MISCELLANEOUS LAND CASE APPLICATION NO. 12 OF 2021**

(Arising from Misc. Land Application No. 375 of 2020 at the District Land and Housing Tribunal for Morogoro District at Morogoro)

**AHMAD SHABAN MBEGU ..... APPLICANT**

**VERSUS**

**1. ABDALLAH Y. NUNDA**

**2. MOROGORO MUNICIPAL COUNCIL ..... RESPONDENTS**

**RULING**

Date of Last Order: 03/03/2022 &  
Date of Ruling: 04/03/2022

**S.M. KALUNDE, J.:**

In this application the applicant is seeking an extension of time within which to lodge an appeal out of time against the decision of the at the District Land and Housing Tribunal for Morogoro District at Morogoro ("the tribunal) in **Misc. Land Application No. 375 of 2020**. The application is desired under section 41(2) of the **Land Disputes Court Act [Cap. 216 R.E. 2019]** ("the LDCA") and is being supported by an

affidavit dully deposed by the applicant. The respondents did not file any counter affidavit in opposition.

Briefly stated the facts leading to the present application are that: before the tribunal the applicant filed Misc. Land Application No. 375 of 2020 seeking to have the applicant joined in Application No. 104 of 2019 pending at the tribunal. The application was eventually dismissed with costs. The decision of the tribunal in dismissing the appeal was delivered on 18<sup>th</sup> August, 2021. Being aggrieved by the decision, the applicant lodged a letter with the tribunal seeking to be supplied with copies of Judgment and decree of the tribunal. The copies were made available for collection on 08<sup>th</sup> October, 2021 and eventually on 27<sup>th</sup> October, 2021 the present application was filed.

Submitting in support of the application **Ms. Hadija Shaban**, learned advocate quickly sought to adopt the content of the affidavit filed in support of the application as part of her



submissions. She went on to argued that delay in lodging the appeal was out of the control of the applicant. She contented that upon delivery of the decision on 18<sup>th</sup> August, 2021, on 02<sup>nd</sup> September, 2021 the applicant wrote a letter to the tribunal requesting to be supplied with the copies of the decision for preparation of the appeal. She informed the Court that on 07<sup>th</sup> October, 2021 the applicant was called via a mobile phone to collect the judgment. Subsequently, on 08<sup>th</sup> October, 2021 he collected the judgment and 20 days later the present application was filed. The counsel prayed the application be granted. In bolstering her position, she cited the decision of this Court in **Tanzindia Assurance Company Limited and Another vs Richard Augustine Zuberi** (Civil Appeal 129 of 2019) [2020] TZHC 1542 (29 July 2020 TANZLII); and **Lewin Bernad Mgala vs Lojasi Mutuka Mkondya and Others** (Land Appeal 33 of 2017) [2020] TZHC

44 (27 February 2020 TANZLII); for an argument that extension of time was not automatic.

For the 2<sup>nd</sup> Respondent **Mr. Alison Kileli**, learned State Attorney was brief, he said that his clients were not opposing the application.

Having summed up the brief background of the case and summarized the submissions of the parties, the remaining question for my determination is whether the application is merited. I will start by looking at the governing law in relation to the applications of the present nature. This application is founded on section 41(2) of the LDCA. The respective section provides as follows:

*"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]

The above provision and, I must admit even the LDCA, does not outline the procedure for filing an appeal. It is for that reason that, in terms of section 51(1) of LDCA **the Civil Procedure Code, Cap 33 R.E. 2019** ("the CPC") is applicable in proceedings before the trial tribunal. The procedure for lodging appeals under the CPC is provided for under of **Order XXXIX Rule 1 (1)**. Under the said provision it is the requirement that a Memorandum of Appeal must be accompanied by a copy of the judgment and decree from which the appeal arise. In appreciation of the fact that a party may fail to obtain a copy of the judgment and decree by reasons beyond their control, section 19(2) of the **Law of**

**Limitation Act, Cap. 89 R.E. 2019** ("the LLA") requires that the period spent awaiting judgment and decree be excluded.


The section reads:

*"19(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]

In the present case, it is common knowledge that the decision sought to be challenged was delivered on 18<sup>th</sup> August, 2021. There is also no dispute that on 02<sup>nd</sup> September, 2021 the applicant applied to the tribunal to be supplied with the copies of the decision for preparation of the appeal. Available records also show that the judgment and decree were certified as being ready for collection on 07<sup>th</sup> October, 2021 and the same were collected on 08<sup>th</sup> October, 2021. Applying section

19(2) of the LLA, the period from 18<sup>th</sup> August, 2021, when the decision was delivered, and 07<sup>th</sup> October, 2021 when copies of the judgment and decree was certified as being ready for collection, ought to be and is hereby excluded from computation of the period of limitation prescribed for an appeal under section 41(2) of the LDCA. Given the above circumstances, the clock of limitation started to run against the applicant from the 08<sup>th</sup> October, 2021. That said, by the 27<sup>th</sup> October, 2021 when the present application was filed, the applicant was well within time to lodge his appeal.

On whether the extension is automatic or otherwise, I think the position is well-settled that the extension is automatic as long as there is proof on the face of records there are materials depicting the dates of the critical events for the reckoning of the prescribed limitation period. This view was extensively discussed by the Court of Appeal as recent as 13 April 2021 when it was faced with an akin situation in the case 

of **Alex Senkoro & Others vs Eliambuya Lyimo** (Criminal Appeal No.16 of 2017) [2021] TZCA 104; (13 April 2021 TANZLII) in which having cited section 19 (2) of the LLA the Court (**Ndika, J.A**) went on to say 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. Indeed, that stance was taken recently in **Mohamed Salimini v. Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2018 (unreported) where the Court affirmed that section 19 (2) of the LLA obliges courts to exclude the period of time requisite for obtaining a copy of the decree appealed from.*

*Furthermore, this Court took a similar standpoint in two recent decisions where the proviso to section 379 (1) (b) of the Criminal Procedure Act, Cap. 20 R.E. 2002 [now R.E. 2019], an analogous exclusion stipulation, was considered: **Director of Public Prosecutions v. Mawazo Saliboko @Shagi & Fifteen Others**, Criminal Appeal No. 2017; and **Samuel Emmanuel Fulgence v. Republic**, Criminal Appeal No. 4 of 2018 (both unreported). To illustrate the point, we wish to extract what we said in **Mawazo Saliboko @ Shagi & Fifteen Others** (supra) where the learned High Court*



*Judge had decided that the exclusion was not automatic:*

*"The learned Judge was of the view that, though the appellant filed the appeal within 45 days after being served with the copy of the proceedings, he ought to have applied for extension of time to do so because he was time-barred from the date of the impugned decision. **On our part, we are of the decided view that the intention of the legislature under the proviso to section 379 (1) (b) of the CPA was to avoid multiplicity of, and delay to disposal of cases. That is why it provided for automatic exclusion of the time requisite to obtain a copy of proceedings, judgment or order appealed from, this is different where the intending appellant finds himself out of 45 days to file an appeal after receipt of the copy of proceedings.**"[Emphasis added]*

*We need to stress what we stated in the above case that the exclusion is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period. For the purpose of section 19 (2) and (3) of the LLA, these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was requested and the date of the supply of the requested document.*

For the forgoing reasons, I am satisfied that the application merited and the same is granted. Consequently, the applicant is granted 21 days within which file the intended appeal. The period shall start to run upon obtaining certified copies of this ruling. In the circumstances, I make no order as to costs.

**Order accordingly.**

**DATED at MOROGORO this 04<sup>th</sup> day of MARCH, 2022.**



**S.M. KALUNDE**

**JUDGE**