

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC LAND APPLICATION NO 67 OF 2021

OJUKWU JOSEPH HERBERT SIRIKWA

(Legal representative of the late

Joseph Sirikwa) APPLICANT

VERSUS

ENOCK PASCAL HURBERT

(Legal representative of the late

Pascal Hurbert Sirikwa).....RESPONDENT

RULING

04/04/2022 & 23/05/2022

D.C. KAMUZORA. J

The Applicant preferred this application seeking for extension of time to appeal to this court against the decision of the District Land and Housing Tribunal (the tribunal) of Arusha in Application No. 81 of 2015 that was delivered on 21st July 2021. The application was brought under

the provision of section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019 and supported by an affidavit sworn by the Applicant himself. The application is strongly opposed through the counter affidavit deponed by the Respondent.

When the matter was called for hearing the Applicant was represented by Mr. Henry Simon, learned advocate and the Respondent was represented by Ms. Beatrice F. Mboya, learned advocate. Hearing of the application proceeded by way of written submissions and both parties filed their submissions as scheduled.

The brief background leading to this application is that, the Applicant sued the Respondent in the District Land and Housing Tribunal (the trial tribunal) vide Application No. 81/2015 and the judgment was entered in favour of the Respondent. Dissatisfied, and as the time to appeal had already lapsed, the Applicant preferred this application seeking an order of this court enlarging time to appeal. The main issue calling for the determination by this court is whether the Applicant has demonstrated sufficient reasons for the delay.

Submitting on the application the counsel for the Applicant argued that, the reason for the delay was caused by the delay in the supply of the copies of judgment, decree and proceedings of the District Land and

Housing Tribunal to the Applicant. Mr. Simon explained that, the counsel for the Applicant wrote a letter to the trial tribunal on 14th July 2021 applying for copies but the trial tribunal did not notify the Applicant on whether the requested documents were ready for collection. That, it was until on the 1st day of September 2021 on the cause of follow up the Applicant was given control number to make payment for copy of judgment which was ready for collection. That, when the Applicant collected a copy of judgment the time to appeal had already lapsed and still the copy of decree and proceedings were missing which again made the Applicant on 6th September 2021 to write another letter requesting for the said documents which were necessary for appeal purpose.

The counsel for the Applicant insisted that the Applicant should not be punished by the mistake of the trial tribunal as the requested documents were necessary to prepare grounds of appeal. He argued that, the delay to file an appeal on time was beyond the Applicant's capacity and he termed the delay as technical delay as supported by the case of **Mary Kimaro Vs. Khalifan Mohamed** [1995] TLR 202.

Opposing the application, the counsel for the Respondent submitted that, the Applicant cannot blame the trial tribunal for his delay to file the appeal as the delay was due to his own negligence for failure

to obtain the said copies of judgment, decree and proceedings on time. she insisted that, negligence is not sufficient cause to extend the time for appeal rather it is a deliberate delaying tactic to justice. To buttress her submission, she cited the case of **Frank Leonard Sanga Vs Aneth Abdul Mhina**, Misc. Application No 310 of 2019.

The counsel for the Respondent submitted further that, the Applicant ought to have made a follow up for copies after his advocate wrote a letter on 14th July 2021. She pointed out that, the Respondent wrote a letter requesting for copy of judgment on 18th August 2021 as per annexure EPH1 to the counter affidavit and obtained the copy of judgment on 19th August 2021 which was certified on 11th August 2021 which means that it was ready for collection. That, by the time the copies were ready for collection the Applicant was still within time to appeal but he never bothered himself to make follow up. She added that, the Applicant obtained copy of judgment on 1st September 2021 yet he filed his application on 16th September 2021 thus he ought to account for each day of delay as was stated in the case of **Wambele Ntumwa Shahame V Mohamed Hamis**, Civil Reference No 8 of 2016 as well as the case of **Saidi Issa Ambunda V Tanzania Harbours Authority**, Civil Application No 164 of 2005.

The counsel for the Respondent concluded that, it is the discretion of the court to grant extension of time but the court has to consider if the Applicant has shown good cause to grant such extension of time. That, in this application the Applicant has failed to diligently exercise his right of appeal within time due to his own negligence and so the present application lacks merit and ought to be dismissed with costs.

In a brief rejoinder the counsel for the Applicant reiterated the submission in chief and added that, there was no negligence on the part of the Applicant since the Applicant's advocate wrote a letter on 14th July, 2021(annexure 2) to the trial tribunal requesting to be supplied with the copies of judgment, decree and proceedings in respect of Application No. 81/2021 for purpose of appealing. That, even the Respondent has not submitted as whether he has already obtained the decree and proceedings. The Applicant was of the view that the case of **Frank Leonard Sanga** cited by the Respondent is irrelevant and distinguishable.

On the point of accounting each day of the delay the counsel for the Applicant argued that after being supplied with a copy of judgment the Applicant wrote another letter requesting for copies of decree and proceedings which are yet to be supplied until to date. The Applicant

insisted that the delay was technical and prayed for the application to be granted.

From the submission by the parties and the affidavit of the parties, the pertinent issue is whether the Applicant has adduced sufficient reasons for extension of time. 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, certain factors were 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 Applicant has relied on two reasons for the extension of time as depicted under the Applicant's affidavit in support of the application, one being technical delay that is, the delay by the trial tribunal to avail him with copies of judgment, decree and proceedings and second, that, there are serious legal issues which needs the determination by this court. the second reason however was not addressed during the submission.

On the issue of technical delay, the Applicants' counsel demonstrated the reasons for the delay in filing the appeal on time. Based on the affidavit in support of the application and the submission by the counsel for the Applicant, the following were observed. The judgment of the trial tribunal was pronounced on 12/07/2021 and was certified as the true copy of the original on 11/08/2021 as per

annexure1. Annexure2 shows that the Applicant requested for copies of judgment, decree and proceeding for the purpose of preparation of appeal on 14/07/2021 and obtained only a copy of judgment on 01/09/2021 that was certified by the trial tribunal on 11/08/2021. Annexure 3 to the Applicants' affidavit is the exchequer receipts with number 9212244066416254 which supports the argument by the Applicant that copies of judgment was obtained on 1st September 2021. By the time the Applicant was supplied with a copy of judgment time to appeal had already lapsed. This court being faced with a similar situation in Civil Reference No. 9 of 2020 arising from the Ruling of Taxation Officer in Taxation Civil Case No. 76 of 2019, **Joseph Ngereja Mchungu Vs. Equity for Tanzania Limited**, Kakolaki J, held that;

"The law under section 19(2) and (3) of Act, [Cap. 89 R.E 2019] (LLA) provides automatic exclusion of the period of time spent for obtaining a copy of judgment/ruling or decree or order sought to be impugned."

This was also the position of the Court of Appeal in **Alex Senkoro and 3 others Vs. Eliambuya Lyimo (As Administrator of the Estate of Fredrick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 CAT (unreported) where it was held:

'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.'

Based on the above argument and the holdings of the Court of Appeal the time requisite needed in obtaining the certified copies of judgment and decree are to be excluded in computation of time. Applicant upon obtaining a copy of judgement on 01/09/2021 he lodged this application praying for extension of time to appeal on 16/09/2021. If excluding the time used to obtaining the copies, then the Applicant filed this application two weeks later. The Respondent was of the view that the Applicant did not account for days of delay.

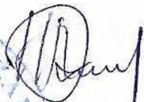
As it was so propounded in numerous decisions, a delay of even a single day, has to be accounted for, otherwise, there would be no need of having rules prescribing periods within which certain steps have to be taken. As stated earlier that the Applicant was availed with the certified copy of the trial tribunals judgment on 01/09/2021 and as this application for enlargement of time was made on 16/09/2021 I find it that one cannot say that the Applicant was reluctant or negligent or

acted in apathy or sloppiness in taking proper action on time. The delay was not inordinate, and the Applicant acted diligently in taking proper action as it was well demonstrated in the affidavit in support of application and the submission by the counsel for the Applicant.

Having determined that the Applicants' delay in filing the appeal was reasonably explained, to me that warrant good reason for the grant of extension of time. In considering the decision in the case of **Benedict Shayo Vs Consolidated Holdings Corporation as Official Receiver of Tanzania Film Company Limited**, Civil Application No. 366/01/2017, I do not see how the Respondent will be prejudiced by the grant of extension of time.

The application is therefore granted. The Applicant is allowed to file his appeal within thirty (30) days from the date of this ruling. No order for costs is made.

DATED at ARUSHA this 23rd Day of May, 2022.


D.C. KAMUZORA
JUDGE

