

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SLAAM**

MISC. LAND APPLICATION NO. 316 OF 2021

**(Originating from the District Land and Housing Tribunal for
Kilombero/Malinyi in Land Appeal No. 127 of 2020)**

**ASUNTA LITALI..... APPLICANT
VERSUS
FILOMENA MAJENGO..... RESPONDENT**

R U L I N G

21st & 31st March, 2022

CHABA, J:

By way of Chamber Summons, the applicant moved this Court under Section 38 (1) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] (the Land Disputes Act) seeking for an extension of time to file an appeal against the decision and order of the District Land and Housing Tribunal for Kilombero/Malinyi in Land Appeal No. 127 of 2020 (the DLHT) which stemmed from the decision of Ching'anda Ward Tribunal in Land Case No. 05 of 2020 (the Ward Tribunal). The application is supported by an affidavit deposed by Ms. Asunta Litali.

At the hearing of this application, both the applicant and the respondent appeared in persons and unrepresented.

Submitting in support of the instant application, the applicant stated that her case at the DLHT was concluded on 16/03/2021 and no copy of judgment was supplied. She argued that her efforts to obtain the said

copy of judgment ended in vain. The reason behind according to her is that, by then the Chairman was in Katavi. On 24/04/2021 she reported the matter at the office of the District Commissioner (the DC) in the District of Kilombero/Malinyi. According to the applicant, the DC phoned the Chairman, but he informed the DC that he was in Katavi. He added that the DC informed the Chairman to supply the copy of judgment to the applicant as soon as practicable. Later, she was given some instructions by the DC to the effect that she had to go to the office of the DLHT as portrayed at para 5 of the affidavit. When she arrived there, she was given with the Control Numbers and she immediately paid for the copy of judgment. The applicant showed this Court the document bearing the title "*fomu ya kuweka fedha (NMB)*" dated 24/04/2021 for identification purpose.

She submitted further that she received the copy of judgement at the end of April, 2021, though she deposed in her affidavit that she was served with a copy of judgment on 07/05/2021. Since she was already out of time her learned counsel advised her to file the instant application seeking for an extension of time to file her appeal out of time, and she immediately complied with counsels' advise.

On her part, the respondent opposed the applicant's application stating that the Chairman travelled to Katavi on 09/08/2021. She said, she was served with the copy of judgment on 23/06/2021. On 08/09/2021 she lodged execution proceedings before the DLHT for Kilombero/Malinyi, at Ifakara intending to execute the judgement and decree of the DLHT. She prayed the applicant's application be rejected

To rejoin, the applicant reiterated her prayers and narrated that the delay was beyond her control.

Having gone through the court records, the instant application and the parties' oral submissions for and against the grant of this application, the main issue for determination is whether the applicant has adduced sufficient reasons to warrant this Court exercise its discretionary power to grant extension of time.

It is evident from the judgment of the DLHT that the respondent on behalf of Mr. Alex Suta successfully filed a case in the Ward Tribunal of Ching'anda against the applicant to recover her piece of land which is alleged to have been trespassed by the applicant. The said plot of land did belong to Mr. Alex Suta. Dissatisfied with the decision of the trial Ward Tribunal, the applicant unsuccessfully appealed to the DLHT. Again, she lost because her appeal was dismissed with costs and the decision of the Ward Tribunal was upheld. As indicated above, the applicant was dissatisfied with the decision of the DLHT as depicted at paragraph 3 of the affidavit, but she found herself out of time.

As submitted by the applicant, the DLHT delivered her judgment on 16/03/2021 and she was served with a copy of the said judgment on the 7th May, 2021 as shown in para. 6 of the affidavit. According to Section 38 (1) of the Land Disputes Courts Act [Cap. 216 R.E. 2019], the law says, appeals of matters originating from ward tribunal must be filed within sixty (60) days. It is thus read:

"Section 38 (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:

Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired”.

From the foregoing provision of the law, the time to appeal to the High Court of Tanzania, Land Division is sixty (60) days from the date of judgment. If the DLHT pronounced her judgment on 16/03/2021, it means that the time to appeal to this Court expired on 15/05/2021. The major reason for delay advanced by the applicant is that she was making a follow up to obtain the copy of judgment and further that the decision of the trial Tribunal is tainted with the serious legal irregularities which merits the intention of lodging an appeal so that the Court can intervene to rectify those irregularities by way of appeal.

It is common ground that extension of time is founded on judicial discretion and the applicant is duty bound to show good and reasonable cause to warrant the court exercise its discretionary power as it was expounded in the case of **Kalunga and Compan y Advocates v. National Bank of Commerce Limited** [2006] TLR at page 235. It is settled that what amount to sufficient cause is not yet defined. (See: **Tanga Cement Company Limited vs. Masanga and Amos A. Mwalwanda**, Civil Application No.6 of 2001 (Unreported)).

It is further clear from decided cases that, a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay,

lack of diligence on the part of the applicant, length of the delay, whether or not the delay has been fully explained, diligence on the part of the applicant and whether there is an illegality in the impugned decision. (See: **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported)).

Back to the instant application, the applicant stated that she delayed to file her appeal because she was making a follow up to obtain the copy of judgment and added that since the decision of the trial tribunal and first appellate tribunal are tainted with the serious legal irregularities which merits the intention of lodging an appeal, the same can be rectified by this Court only by way of appeal. According to the applicant, she received the said copy of judgment on 07/05/2021 and she successfully accounted for each day of delay from the date the judgment was pronounced to the date she received the copy of judgment.

In gauging whether the applicant has exhibited sufficient cause to warrant this Court exercise its discretionary power and grant the prayers sought in line with the principles of law enshrined in the above cited case laws, I see merits on this application. I say so because, when the provisions of the Land Disputes Courts Act (supra) read in line with Part III, paragraph 21 of the Schedule to the Law of Limitation Act (supra), it prescribed limitation of time for an application falls on any other written laws for which no period of limitation is provided in the Law of Limitation Act or any other written law to be sixty (60) days from the time the

decision is delivered. Moreover, section 19 (2) of the Law of Limitation Act provides inter-alia that:

"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".

In the light of the above provision of the law, the period between 16/03/2021 and 07/05/2021 when the applicant eventually obtained a copy of the decree, have to be excluded in computing time. The records reveal further that, on 16/03/2021 the applicant wrote a letter to the trial Tribunal requesting to be supplied with copies of judgment and decree for the purpose of an appeal, but the same was supplied on 07/05/2021 and thereafter, she filed the instant application on 1/07/2021.

Having considered the reasons advanced by the applicant and the relevant provisions of the laws and on the basis of the decision of the Court of Appeal of Tanzania in **Valerie Mcgivern v. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019; CAT – Tanga (unreported) where application of Section 19 (2) of the Law of Limitation Act (supra) was positively considered, alike in this application, I am satisfied that the applicant has expounded sufficient reasons to warrant this Court exercise its discretionary power to extend time for her to file an appeal out of time.

From the above analysis, and to the extent of my findings, I am satisfied that the instant application is meritorious. I thus hereby grant the prayers sought by the applicant. Each party shall bear its own costs.

I so order.

DATED at MOROGORO this 31st day of March, 2022.



M. J. Chaba

Judge

31/03/2022

Court:

Judgement delivered at my Hand and Seal of this Court in Chambers this 31st day of March, 2022 via teleconference whereby the appellant and respondent were remotely present.




M. J. Chaba

Judge

31/03/2022

Rights of the parties fully explained.



M. J. Chaba

Judge

31/03/2022

