

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
LAND DIVISION  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 302 OF 2020**

*(Application for extension of time arising from Ruling of the District Land and Housing Tribunal for  
Kilombero District at Ifakara in Misc. Application no. 344 of 2018)*

**ARCHILLEUS GAUDENCE SINGUNDALI (as administrator of estate  
of the late GAUDENCE SINGUNDALI) ..... APPLICANT  
VERSUS**

**SALIMA AMRI.....1<sup>ST</sup> RESPONDENT  
JOYCE G. SINGUNDALI & OTHERS.....2<sup>ND</sup> RESPONDENT  
PROPERTY INTERNATIONAL LTD .....3<sup>RD</sup> RESPONDENT**

**RULING**

*Final submission date on: 14/3/2022*

*Ruling date on: 31/3/2022*

**NGWEMBE, J:**

From the outset, this application for extension of time must be granted to allow the applicant to lodge his intended appeal out of time, with a view to determine conclusively the alleged impugned ruling of the District Land and Housing Tribunal for Kilombero District at Ifakara, delivered on 19/11/2019. It is alleged that such ruling aggrieved the applicant thus, intended to appeal, hence requested for copies of that offending ruling and drawn Order vide a letter dated 19/11/2019. Unfortunate such letter was



not responded to, tireless as he was, he wrote another letter of similar contents on 20/2/2020 and the last one was written on 18/5/2020. Finally, he received those copies on 2/6/2020 and he lodged this application for extension of time on 3/6/2020. The application was encountered with resistances from the respondents by way of counter affidavits.

Upon completion of pleadings, and since same was delayed for several absences of parties to appear in court, this court ordered parties to address the court by way of written submissions, which they complied with.

Briefly, the learned advocate January Raphael Kambamwene for the applicant, submitted by narrating the genesis of this application and the episode of what happened to the applicant until he found himself out of time. The good reason advanced by the applicant is that, he failed to appeal within time due to delays caused by the trial Tribunal to supply necessary documents; that is, ruling and drawn order to enable him, prepare and file a proper appeal. Mr. Kambamwene referred this court to section 19 (2) of the **Law of Limitation Act, Cap 89 R.E 2019** and stated that he is aware that the exclusion of the time is only where the Judge authorizes after being satisfied that indeed, time was spent in waiting for the Ruling/Order and that the applicant was not negligent.

He rested his short submission by a prayer to grant the orders sought in the chamber summons for he was prevented by sufficient reasons from appealing within time.

On the adversarial side, the learned advocate for the first respondent opposed the application forcefully, that on 2/6/2020 the applicant was supplied with the requisite documents, thus, in terms of section 19 (2) of the Law of Limitation Act, Cap 33, he ought to have filed an appeal before this court without seeking extension of time. He further submitted that it is the trite principle of law, that the time spent in waiting for the requested documents should be excluded. In that way, once the documents are supplied, the available remedy is to file appeal as opposed to seeking extension of time. To support his argument he referred this court to the case of **Valerie McGivern Vs. Salim Farkrudin Balal, Civil Appeal No. 386 of 2019 (CAT)**. Also cited the case of **Ngao Godwin Losero Vs. Julius Mwarabu, Civil Application No. 10 of 2015 (CAT)** at page 6 where it was held:-

*"When all is said with respect to the guiding principles, I will right away reject the explanation of ignorance of the legal procedure given by the applicant to account for the delay. As has been held times out of number, ignorance of law has never featured as a good cause for extension of time....."*

In conclusion, he resisted the application for extension of time and invited this court to consider validity of section 19 (2) of the Law of Limitation Act, if at all this application is relevant to be granted.

In rejoinder the applicant cited section 3 (1) of the Law of Limitation Act, which calls for automatic and immediate dismissal of appeal if filed outside the prescribed time limitation. Buttressed by citing the case of **Stanley Julius Mbaga Vs. Nestory Omary Diwani, Civil Appeal No. 65 of**



**2016** where this court insisted that exclusion of time is not an automatic thing.

Having summarized the arguments of both parties, I proceed to justify my conclusion arrived herein above by borrowing a leaf from the judgement in the Case of **Henry Muyaga Vs. TTCL, Application No. 8 of 2011**, where the Court interpreted judicial discretion among other things as follows:-

*"The discretion of the Court to extend time under rule 10 is unfettered, but it has also been held that, in considering an application under the rule, the courts may take into consideration, such factors as, the length of delay, the reason for the delay, the chance of success of the intended appeal, and the degree of prejudice that the applicant may suffer if the application is not granted".*

The applicant has argued quite strongly, that the delay to lodge his appeal within time was never contributed by him, rather was made by the trial Tribunal due its failure to supply him the required documents. There is no doubt that grounds of appeal are found in the ruling of the trial Tribunal, proceedings and drawn order. These are essential documents for appeal. It is on record that those documents were ready for collection after being certified and stamped on 2/6/2020. In the circumstances, the delay was contributed by the trial Tribunal itself. Of course, a duty of a litigant in an application for extension of time is to show sufficient reasons as to why he delayed to appeal within time.



The respondent resisted the application by relying on section 19 (2) of the Law of Limitation Act. He rightly pointed out that the principle of law is settled that, the time spent in waiting for the requested documents should be excluded. The question is whether that exclusion is an automatic or should be granted by the court of law? I leave this question to be answered in another suitable case.

Considering deeply on the nature and purpose of the intended appeal, I find no reason to deny him extension of time. This is important for this court to determine and give legal position on that appeal against the Tribunal's ruling. The question is whether the ruling of the Tribunal is appealable? Another issue is whether the Tribunal committed an error capable of being corrected by this court? These questions and others may be answered appropriately when determining the intended appeal.

In up short, I proceed to exercise my discretion to grant the applicant 14 days from the date of this ruling to lodge his appeal. Each party to bear his own costs.

**Order accordingly.**

**Ruling** delivered in Chambers on this 31<sup>st</sup> March, 2022.



**P.J. NGWEMBE**

**JUDGE**

**31/3/2022**



**Court:** This ruling is delivered in chambers this 31<sup>st</sup> day of March, 2022 in the presence of Mr. Kambamwene Advocate for the applicant and in the absence of the Respondents.

**Right to appeal explained.**



A handwritten signature in blue ink, appearing to be "P.J. NGWEMBE", is written over a horizontal line.

**P.J. NGWEMBE**

**JUDGE**

**31/3/2022**