

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA.**

**MISCELLANEOUS LAND CASE APPLICATION NO. 1 OF 2022**

*(Originating from the District Land and Housing Tribunal for Songea in Land Application  
No. 110 of 2017)*

**REMIGIUS NGUNJA AND FABIAN MPONJI ..... APPLICANTS**

**VERSUS**

**BENEDICT LUAMBANO MABALANGANYA ..... RESPONDENT**

**RULING**

19.05.2022 & 27.05.2022

**U. E. Madeha, J.**

This is an application for an extension of time made by way of chamber summons under section 41 (2) of The Land Disputes Courts Act (Cap 216 R.E. 2019). The Applicants are praying for the extension of time so as to file an appeal out of time.

At the hearing of the application, the Applicants were represented by Marco Kisanda the learned Advocate whereas, the Respondent was represented by Mr. DP Ndunguru learned Advocate.

Mr. Marco Kisanda prayed this Court to adopt the affidavit in support of the chamber summons for the reasons stated in paragraphs three (3),

four (4), five (5), six (6), seven (7), and eight (8) of the affidavits. He submitted further that, in these paragraphs, it was stated that the Applicants were the Respondent in the Land Application No. 110 of 2017 in the District Land and Housing Tribunal of Songea before which the Judgement and decree were delivered on the 7<sup>th</sup> day of December 2021 in favour of the Respondents. The Applicants learned Counsel submitted further that, the Applicants on the same date applied to be supplied with the certified copies of judgment, decree, and proceedings with a letter which had "MAA/07/12/21" as a reference number. On the same day, he served the letter to the Respondents' Advocate. Also, he added that on 28<sup>th</sup> February 2022 the Applicant's Advocate wrote a reminder letter which was to be attached with the copies of proceedings. Unfortunately, the copies of the proceedings were not yet supplied and were received by the trial tribunal on the 2<sup>nd</sup> day of March 2022. He further averred that the Applicants were supplied with all these applied documents on different dates of which they failed to appeal on time as the said documents were vital and compulsory in appealing to this Court. Additionally, there was a delay in supplying the copies of proceedings to the Applicants. Moreover, the only option was to apply for an extension of time. The Applicants learned Counsel submitted

further that, the delay in appealing to this Court was not attributed to the Applicants but to the prolonged process to get the supplied copies of the decree and proceedings from the trial tribunal. To show that they were prompt and diligent he made reference to the decision of this Court in the case of **The Registered Trustees of the Evangelical Lutheran Church in Tanzania Southern Diocese v. Emeliana Petro Msige** Land Appeal No. 13 of 2018 before High Court of Tanzania of Iringa Registry. (Unreported) whereby it was stated that:

*"Where an intending appellant is delayed to be issued with a copy of judgment and decree by the trial Court, he is required under the law to apply for enlargement of time within which to appeal in which case he should cite the said delay by the trial Court as the cause for his inaction. The reason for this is clear. It is to compel such a litigant to account for each day of delay and to avoid the laissez-faire attitude in Court business."*

In reply, Mr. Dickon Ndunguru had an objection to the prayers made by the learned Counsel for the Applicants. He claimed that in the moment or at the present if there is a delay in the supplying or provision of the

judgment's copy, proceedings, and a decree. The Applicants were still allowed to appeal without requesting an extension of the appeal period. He argued further that, the Applicant's Advocate was only required to file his memorandum of appeal and he was not required to appeal out of time. The learned Counsel continued to argue that, the Applicants were not supposed to file the application for an extension of time instead they were supposed to file an appeal.

He prayed that his prayer to be struck out. The Counsel went on to say that from the date when they were supplied with the copies of judgment, they were therefore required to file an appeal within forty-five (45) days. Additionally, he found and realized that these applications were meaningless because giving them an extension of time is a Court discretion. Concerning the issue of time extension, while waiting for copies of judgment, decree, and proceedings, in support of his argument, Mr. Dickson Ndunguru cited the decision of the Tanzania Court of Appeal in the case of **Alex Senkoro and three others v. Eliambuya Lyimo (As Administrator of the Estate of the Fredrick Lymo, Deceased)** Civil Appeal No. 16 of 2017 (unreported) in which they elaborated Sub-section (2) and (3) of section 19

of Law of Limitation Act [Cap 89 R.E. 2019] was discussed, these subsections clearly provide terms that: -

*"19. -(1) In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded.*

*(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."*

*(3) where a decree is appealed of sought to be reviewed, the time requisite for obtaining a copy of the judgement on which it is founded shall be excluded."*

On the foregoing, based on the instructions given in the case of **Alex Senkoro** (Supra), and section 19 of LLA. I agree with the Respondent Advocate and note that the Applicants were not required to file an application for an extension of time to file an appeal but all they had to do was to file

an appeal directly to the High Court as soon as they had received the copies of proceedings, decree, and judgment. In regard to that, the time started to be counted when the copies of the judgment, decree, and proceedings were handed over to them. Moreover, they had to appeal and were not supposed to wait for an extension of time to file an appeal.

Therefore, the Applicants failed to establish their case and so the application is devoid of merit. The same is struck out. Each party bears its own costs. It is so ordered.

**DATED at SONGEA** this 27<sup>th</sup> day of **MAY, 2022**



A handwritten signature in blue ink, appearing to read "Madeha", is written over a horizontal dotted line.

**U. E. Madeha**  
**Judge**  
**27/05/2022**