

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISCELLANEOUS LAND CASE APPLICATION NO. 15 OF 2022

(Originating from Land Application No. 114 of 2018 from the District Land and Housing Tribunal of Songea at Songea)

MOHAMED HASSAN REHAN APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK PLC 1ST RESPONDENT

YONO AUCTION MART & CO. LTD 2ND RESPONDENT

RULING

Date of Last Order: 21/02/2023

Date of Ruling: 28/02/2023

U. E. Madeha, J.

To begin with, the Applicant is none other than; Mohamed Hassan Rehan by the way of chamber summons filed this application under section 41 (2) of the *Land Disputes Courts Act* (Cap. 216, R.E. 2019), seeking for an order of extension of time to file an appeal against the entire decision of the District Land and Housing Tribunal of Songea at Songea in Land Application

No. 114 of 2018. As a matter of fact, the chamber summons was supported by an affidavit sworn by Mr. Lazaro Simba, the Applicant's learned advocate.

It is worth considering that, the application was canvassed by way of written submissions. The Applicant was represented by the learned advocate Mr. Lazaro Simba. On the other hand, the Respondents that is the National Microfinance Bank and Yono Auction Mart & Company Ltd enjoyed the services of Ms. Ester Elias Shoo.

Principally, Mr. Lazaro Simba, the Applicant's learned advocate submitted that the reasons for the delay are well set in the affidavits supporting the application. He averred that the delay was due to the fact that the Applicant was supplied with copies of the judgment and decree of the Trial Tribunal while the time for appeal has expired. He added that it is important to note that, the judgment was delivered on 22nd July, 2022 and the Applicant requested for the copy of that judgment and its decree on the same date. On 9th September, 2022 the Applicant was supplied with copies of the judgment and decree. Furthermore, he argued that it was discovered that the said copies of judgment and decree were defective as they were typed Land Application No. 114 of 2020 while the suit against the parties was Land Application No. 114 of 2018 and it was filed in 2018.

He further submitted that after the discovery of the said defect, the Applicant notified the Trial Tribunal and he requested for rectification of the defect. Moreover, he stated that the letter requesting for rectification (attached as annexure MHR2) was received on 13th September, 2022. Basically, the said defect was not rectified until 11th November, 2022 when the Applicant wrote the letter to remind the Trial Tribunal on rectifying what the Applicant considered as a typing error. On the same note, he contended that due to such a reminder, the Trial Tribunal supplied to the Applicant with the proper copies of the judgment and decree on 18th November, 2022. Additionally, he emphasized that the copies of the judgment and decree are very important documents that are very necessary for initiating the appeal from the District Land and Housing Tribunal to this Court. Notably, he avowed further that from July 2022 when the judgment was delivered to 18th November, 2022 when the proper copies of the judgment, proceedings, and decree were supplied to the Applicant, it was the clear date to start counting for each day of delay for the purpose of appeal.

To crown it all, he submitted further that the duty of supplying copies of judgment and the decree to the parties are prescribed under section 41 (2) of the *Land Disputes Courts Act* (Cap. 216, R.E. 2019) and it is upon the

Trial tribunal to supply to the parties the copies of the judgment and decree. In fact, the Applicant was required to apply the same as he did. For more emphasis, he cited with approval the case of **Yasin Athman Mfinanga v. Judith Ndaba**, Misc. Civil Application No. 02 of 2021 (unreported High Court of Tanzania at Dodoma) which quoted with approval the decision of the case of **Mbowe Hotels Limited v. National Housing Corporation and Another**, Misc. Land Application No. 722 of 2016 (High Court of Tanzania at Dar es Salaam) where it was held that:

"Once a party does what is required under the law, the internal machinery of the Court is beyond his control and he cannot be punished for any shortcomings."

On the contrary, the Respondents' learned counsel, Ms. Ester Elias Shoo submitted that the Applicant in his submission adduced only one reason for the failure to file an appeal on time which is failure of the Trial tribunal to supply the copies of rectified judgment and decree on time. The Respondents' learned advocate averred that the reason stated by the Applicant does not hold water. Furthermore, she argued that for the extension of time to be granted, the Applicant has to adduce sufficient cause

as it was held in the case of **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) in which it was held that:

"It is trite law that an application for the extension of time is entirely in the discretion of the Court to grant or to refuse it. And that extension of time may be granted where it has been sufficiently established that the delay was with the sufficient cause ... All relevant factors must be taken into account in deciding how to exercise discretion to extend time. These factors include the length of delay, reason for the delay, whether there is an arguable case on appeal, and the decree of prejudice to the defendant if time is extended."

To add to it, she further averred that there is no hard and fast rule for defining the word sufficient cause. However, in the case of **Marry Mchome Mbwambo and Another (As joint Administrator of the Estate of the late Giliad Mbwambo) v. Mbeya Cement Company Limited** (2017) TLR LR 277 at page 283 the Court stated that; what amount to a good cause is not provided under the rule but depends on the circumstances of each case. On the same hand, she further stated that the circumstances of the case at hand, the Applicant herein in his affidavit which has been supplemented by his learned advocate affidavit, all together stated the

reasons for the delay is due to the late supply of the copies of the judgement and decree. To add to it, she further submitted that it is unfortunate that the Applicant has failed to express how diligent he was in making follow-ups.

Apart from that, she further contended that there was no proof of aggressiveness by the Applicant in making follow-ups for the rectified copies of judgment and decree. She cited with approval the case of **East Africa Cables (T) Limited v. Spenco Limited**, Misc. Application Case No. 61 of 2016 High Court Commercial Division and the case of **Dr. Ally Shabbay v. Tanga Bohora Jamaat** (1977) TLR in which it was held that:

"Those who come to Court of law must not show the unnecessary delay in doing so, they must show great diligence."

To crown it all, she contended that the judgment was read on 22nd July, 2022 and the Applicant went to collect on 9th September, 2022 which was fifty (50) good days. Also, it took the Applicant sixty-one (61) days from 13th September, 2022 when he wrote the letter requesting for the rectified copy of judgment to 11th November, 2022, when he decided to write another follow-up or reminder letter. To put it in a nutshell, she submitted that the Applicant has to account for each day of delay. To support her argument

cited with approval the case of **Interchick Company Limited v. Mwaitenda Ahobokile Michael**, Civil Application No. 2018 of 218 of 2016 in which it was held that:

"... delay of even a single day, has to be counted for otherwise there will be no point of having rules prescribing periods within which certain steps have to be taken."

On the same note, she contended that the Applicant failed to prove how diligent he was and he failed to account for each day of delay. She further stated that the Applicant failed to express whether the appeal he intends to file has a chance of success. In that regard, the Applicant also failed to express sufficient cause for this Court to consider his application. Last but not least, she further averred that based on the strength of her foregoing arguments, the Applicant's application is without merit and the same is supposed to be dismissed with costs.

As much as I am concerned, I have reviewed the records of the District Land and Housing Tribunal of Songea in Land Application Number 114 of 2018 and found that the Applicant was given a copy of the judgment and decree on 9th September, 2022. The said copies of judgment and decree has typing errors and on 13th September, 2022 the Applicant wrote a request

letter for rectification. There was no response from the Trial Tribunal and on 11th November, 2022 he wrote a reminder letter.

It seems to be true that, he was given a copy of the rectified copy of judgment and decree on 18th November, 2022. Basically, the application for an extension of time was filed on 25th November, 2022. In fact, if you carefully consider from 18th November, 2022 when the Applicant was supplied with the rectified copy of judgment and decree up to 25th November, 2022 when he filed this application for an extension of time to file his appeal, you will obviously observe that it was only seven days. The time limit for filing the appeal from the Trial Tribunal to this Court is forty-five (45) days.

I am of the view that, the Applicant filed this application within the period he was supposed to appeal. In fact, he was not supposed to file this application requesting for an extension of time. This is due to the fact that the period in which the Applicant was waiting for his copies of judgment and decree was supposed to be excluded by the law of limitation of action under section 19 (2) and (3) of the *Law of Limitation Act* (Cap. 89, R.E. 2019). For easy of reference, the provisions of the above cited Law read as follows:

"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. (3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall be excluded.

To put it in a nutshell, under section 19 (2) and (3) of the *Law Limitation Act* (supra), the Applicant was not required to apply for an extension of time to file his appeal since the period of limitation started to run when he was given copies of the judgment and decree. What he was supposed to do was to request for time exclusion from the Honorable Deputy Registrar of the High Court to exclude the days he was tracking for the rectified copies of judgment and decree.

This stance has been stated in a number of decisions made by the Court of Appeal which is the Apex Court in our country. In the case of **Alex Senkoro & Three Others v. Eliambuka Lyimo (Administrator of the Estate of the Late Fredrick Lyimo, deceased)**, Civil Appeal No. 16 of 2017, Court of Appeal of Tanzania (unreported), the Court observed that:

"... the exclusion of time 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 Law of Limitation Act, these dates are the dates of the impugned decision, the date on which a copy of the decree or judgment was requested and the date of supply of the requested document".

The position of the law stated in the above case was affirmed by the Court of Appeal in the case of **Bukoba Municipal Council v. New Metro Merchandise**, Civil Appeal No. 374 of 2021, Court of Appeal of Tanzania at Bukoba (unreported).

Therefore, since the time limitation for filing an appeal from the District Land and Housing Tribunal is forty-five (45) days, which was not yet lapsed from the date the Applicant was availed with the copies of the judgment and decree to the date he lodged this application, the Applicant was not supposed to file this application. What he was supposed to do was to request the exclusion of the days he used in obtaining the copies of the rectified judgment and decree.

As far as this matter is concerned, I strongly condone the Trial Tribunal's delay in supplying to the Applicant the copies of rectified judgment

and decree. Basing on what has been stated above I am inclined to grant the prayers sought in this application.

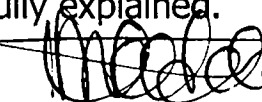
Conclusively, in the event, the prayers sought by the Applicant is granted as prayed and the Applicant is given ten (10) good days from the day being availed with a copy of this ruling to file his appeal. I give no order as to costs. Order accordingly.

DATED and DELIVERED at Songea this 28th day of February, 2023.


U.E MADEHA
JUDGE
28/02/2023



COURT: Ruling delivered on this 28th day of February, 2023 in the presence of the Applicant's advocate and in the absence of the Respondents and their advocate. Right of appeal is fully explained.


U. E. MADEHA
JUDGE
28/02/2023

