

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

**(TANGA DISTRICT REGISTRY)**

**(LAND DIVISION)**

**AT TANGA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 16 OF 2021**

(Originating from Land Application No 41 of 2021 at the District Land and Housing Tribunal FOR LUSHOTO)

**FREDY JANG'ANDU----- APPLICANT**

**VERSUS**

**ROBERT SHELUKINDO SHEKUSA -----RESPONDENT**  
(AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE YOSIA SHEKUSA MAZUNDE)

**RULING**

**DATE OF RULING 3<sup>RD</sup> MARCH 2022**

**MANSOOR, J**

Briefly, the land in dispute is situating at Bazo (Kweputu) Village within Vuga Ward in Lushoto District, Tanga Region. The Applicant Fredy Jang'andu claims that he purchased the piece of land from the late Yosia Shekusa Mazunde in June 2011, for TZs 500,000. That the purchase price was paid in instalments and the last payments of TZS 40,000 was paid on 17/06/2011. That the sale transactions were reduced in writing. It appears from the records that, the Applicant, Fredy Jang'andu, was in possession of the land in dispute.



The Late Yosia Shekusa Mazunde passed away on 19 November, 2013. In 2018, the heirs/children of the Late Yosia Shekusa Mazunde started to demand the land from the applicant. At first, the daughter of the late Yosia Shekusa Mzunde, namely Rahel Yosia Shemuango, initiated a case at Vuga Ward Tribunal, Land Case No. 1 of 2018. The case could not proceed in her name, the Tribunal ordered her to appoint the Administrator of the Estates of the Late Yosia Shekusa Mazunde to continue with the proceedings, the Tribunal held and I quote:

*"kwakuwa eneo linalogombewa ni la marehemu hivyo baraza limeshauri mlalamikaji wakae kifamilia ili waitishe kikao cha kuteuwa msimamizi wa mirathi kisha waende mahakamani ili wapate hati ya kiapo. Pia kwa kuwa eneo lipo kwenye mgogoro basi shughuli zote za maendeleo zisimame mpaka shauri hili litapoisha."*

Then, Alfred Philipo Shekusa applied to be appointed the Administrator of the Estates of the Late Yosia Shekusa Mazunde before Soni Primary Court in Mirathi No. 4 of 2019, and on 08<sup>th</sup> March, 2019, the Soni Primary Court appointed Alfred Philipo Shekusa as the Administrator of the estates of the Late Yosia

Shekusa Mazunde, and he was given the Letters of Administration by the Court on 08<sup>th</sup> March 2019.

On 4<sup>th</sup> March 2019, the proceedings before Vuga Ward Tribunal resumed in the name of Alfred Philipo Shekusa as the Legal Representative of the Late Yosia Shekusa Mazunde. After full Trial, on 11 July, 2019, the Vuga Ward Tribunal pronounced a judgement in favour of Alfred Philipo Shekusa as the Administrator as well as the Legal Representative of the Late Yosia Shekusa Mazunde. The Ward Tribunal declared the land in dispute to be the property of the Late Yosia Shekusa Mazunde. The Ward Tribunal held that there was no sale of the land by the Late Yosia Shekusa Mazunde to Fredy Jang'andu.

Having won the dispute, Alfred Philipo Shekusa applied for execution of the Decree of the Vuga Ward Tribunal at the District and Housing Tribunal for Lushoto; it was Application for Execution No. 67 of 2020. Against this application, Fredy Jang'andu apposed the application and took objections on points of law. He contended that Alfred Philipo Shekusa was not a Decree Holder, and that the applicant did not have locus standi to apply for execution. The objections were

overruled by the District Land and Housing Tribunal on 29<sup>th</sup> April 2021, and ordered the execution to proceed. Fredy Jang'andu was dissatisfied; he filed Misc. Land Application No. 57 of 2021 before the District Land and Housing Tribunal for stay of execution. The application was found incompetent by the District Tribunal, and the application for stay of execution was struck out on 25<sup>th</sup> August, 2021.

The efforts to resist the execution was not successful, Fredy Jang'andu decided to apply for extension of time within which to file an appeal out of time against the decision of Vuga Ward Tribunal dated 11<sup>th</sup> July 2019 in Land Case No. 01 of 2018. This was Misc. Land Application No. 41 of 2020. The Tribunal did not grant him the extension as it held that the Applicant failed to account for each day of delay. The application was dismissed with costs on 20 October, 2020.

Fred Jang'andu intends to appeal against the decision of the District Land and Housing Tribunal denying him the extension of time to appeal, he made the present application (Misc. Land Application No. 16 of 2021) on 29<sup>th</sup> April 2021 for extension of time to appeal against

the decision of the District Land and Housing Tribunal in Misc. Land Application No. 41 of 2020.

During the proceedings , it was found out that Alfred Philipo Shekusa died before he finalised the administration of the estate of the Late Yosia Shekusa Mazunde, thus under section 46 of the Probate and Administration of the Estates Act, Cap 352 R:E 2002, and Rule 46 of the Probate Rules, Robert Shelukindo Shekusa was appointed as the Administrator of the Late Yosia Shekusa Mazunde through the same Mirathi No. 4 of 2019, and so Robert Shelukindo Shekusa was joined as a party to these proceedings to proceed with the application as the Legal Representative of the Late Yosia Shekusa Mazunde. This Order was passed by the Court on 2<sup>nd</sup> August, 2022.

In these proceedings, the Applicant was represented by Advocate Prisca Mtanga while the respondent was represented by Advocate Ali Kimweri. The application was argued by way of written submissions.

The reasons for delay advanced by the applicant in his affidavit in support of the application as well as in the written submissions filed by the applicant's advocate that as soon as the Judgement of the

Vuga Ward Tribunal was pronounced on 11<sup>th</sup> July 2019, he filed Land Appeal No. 30 of 2019 at the District Land and Housing Tribunal, the appeal was filed on 15<sup>th</sup> August, 2019, but the appeal was struck out on 20<sup>th</sup> July 2020 for the reasons that he appealed against the wrong party, the party who was not in the proceedings at the Vuga Ward Tribunal. Then on 11<sup>th</sup> August 2020, he made an application, Misc. Land Application No. 41 of 2020 for extension of time to file an appeal outside the prescribed time, but the application was dismissed on 20<sup>th</sup> October, 2020. Thereafter, the applicant says that he fell ill due to old age, and could not appeal on time. He claims that he was supplied with copies of Ruling on 5<sup>th</sup> November, 2020, and this prevented him from making an appeal on time. The Counsel for the Applicant cited the case of **T.G World International Limited vs. Carrier Options Africa (Tanzania) Limited, Civil Appeal No. 23 of 2021**, in which it was stated that "... attaching a copy of the decree is a legal requirements and the provision imposing this requirement is couched in mandatory terms.

The Counsel argues that the applicant was late to file the appeal due to unavailability of the Ruling and the Orders of the District Land and Housing Tribunal which were supplied to the Applicant very late.

Another reasons for delay is sickness, that the applicant claims to have been sick when he was supplied with the copies of the drawn order and the Ruling of the District Land and Housing Tribunal, and while he was receiving treatments. The applicant states that he has the right to be heard as he was denied the chance from the level of the Ward Tribunal.

I have carefully considered the arguments put forward by both parties through their affidavits as well as through the submissions filed by their advocates. It is on record that the original case was determined by Vuga Ward Tribunal which pronounced a judgment in favor of the respondent, the Judgment was announced since 11<sup>th</sup> July 2019, and about five year has passed. The Applicant applied for extension of time to file the appeal against the decision of the Vuga Ward Tribunal on 11 August 2020, one a half year passed since the Judgment of Vuga Ward Tribunal was announced. The

decision in Misc. Application No. 41 of 2020 was pronounced on 20<sup>th</sup> October 2020, he filed the present application on 10<sup>th</sup> May 2021, and about 8 months delay. The applicant moved the court by citing section 38(1) of the Land Disputes Courts Act No. 2, Cap 216 R: E 2002, the proviso to this section reads:

- (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 (Land Division):

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

The section prescribes for 60 days to file an appeal to the High Court from the date the decision of the District Land and Housing Tribunal exercising its appellate jurisdiction was delivered. The Applicant cited the wrong law as the District



Land and Housing Tribunal was not exercising its appellate jurisdiction when it was entertaining Misc. Land Application No. 41 of 2020, since that application was an application for extension of time. The District Land and Housing Tribunal was exercising its original and discretional powers of entertaining an application for extension of time under the Law of Limitation Act.

Even if we agree that section 38 (1) of the Land Disputes Courts Act, Cap 216 R:E 2009 applies, for the sake of arguments, obviously 60 days expired since the judgment of the District Land and Housing Tribunal was delivered on 20/10/2020, and time to file an appeal lapsed within 60 days from that date. This present application was filed on 29<sup>th</sup> May 2021, almost 8 months after the decision of the District Land and Housing Tribunal was delivered. The reasons for delay as adduced in the Applicant's affidavit are that he applied for a copy of judgment and this was supplied a month later, while he was sick. Although he got the copy of judgment in

November, 2020, he waited for five months before he decided to apply for extension in May 2021.

The Respondent objected the application on grounds that the applicant failed to account for each day of delay which is almost one 8 months from the date the decision of the District Land and Housing Tribunal was delivered.

Section 38 cited in the chambers summons deals with appeals which originated from the Ward Tribunals. Section 38 (1) of the Land Disputes Courts Act CAP 216 RE. 2002 which vest the High Court with discretion in the following terms:

(2) 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 (Land Division): provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal

either before or after such period of sixty days has expired.

Reading between the lines of Section 38 (1) the appeal must be filed within 60 days of the date of the decision and there is no requirement of attaching a copy of judgment or decree in the Petition of Appeal. The law is clear that the appeal should be filed within sixty days after the date of the decision or order. There is no provision of law which requires the Applicants to attach copies of judgment, decree, and proceedings. Section 38(2) of the Land Disputes Courts Act provides that the appeal shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision or order of which the appeal is brought. Under subsection (3), the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal to the High Court (Land Division). Thus, it is the duty of the District Land and Housing Tribunal and not the Applicant/Appellant to forward the proceedings, including the judgment and decree,

to the High Court. Thus, the excuse of being supplied late with a copy of decree or judgment cannot amount to a sufficient cause for granting an extension of time.

Again, it is settled position of the law that, in an application for extension of time, the applicant has to account for every day of the delay: See- **Bariki ISRAEL VS. The republic, Criminal Application No. 4 of 2011(unreported).**

Apart from the allegations of sickness and old age, the applicant has completely failed to prove to court that he was indeed sick as he did not attach to his affidavit any medical chits proving that he fell sick in the month of October 2020, and he only recovered in the month of April 2021. The allegations of sickness were not backed up by any proof.

Generally, I did not find any convincing reasons for granting the extension sought as the applicant failed to account for each day of delay from the date the Ruling/Order of the District Land and Housing Tribunal was pronounced.

A handwritten signature in blue ink, appearing to be 'J. Rao', is written over the page number.

In the result, the application being meritless, it is hereby dismissed with costs.

*Application dismissed with costs.*

DATED AND DELEIVRED AT TANGA THIS 03rd DAY OF MARCH 2023



A handwritten signature in blue ink, appearing to read "Latifa Mansoor".

**LATIFA MANSOOR**

**JUDGE**

**03RD MARCH 2023**