

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI**

MISC. LAND APPLICATION NO. 5 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Bababti at
Babati in Land Application No. 64 of 2016)

**TATU SAIDI NTANDU (administratrix of the estate of the late
JUMA KIULA MKOMA.....APPLICANT**

VERSUS

ANDREA ALEX.....1ST RESPONDENT
FREDERICK SUMAYE.....2ND RESPONDENT
**NOEL MARK MAFFA (administrator of the estate of the late
MARK DAGHARO MAFFA).....3RD RESPONDENT**
SAIDI ATHUMANI.....4TH RESPONDENT
JAJA NYOKA.....5TH RESPONDENT
SAYMON BARAKA.....6TH RESPONDENT
BALTAZAR QAYMO.....7TH RESPONDENT

RULING

Date: 15/3/2023 & 20/4/2023

BARTHY, J.

The applicant preferred the present application under Section 41 (1) of the Land Disputes Courts Act, [CAP 216 R.E 2019], (hereinafter referred as the Act), seeking for the following reliefs namely;

- 1. That this honourbale court be pleased to grant the applicant for an order extending time for filing appeal*

applicant for an order extending time for filing appeal out of time vide in the District Land and Housing Tribunal at Babati application No. 64 of 2016 which was decided on the 24/11/2022 in favour of the Respondents.

2. Costs to be provided for.

3. Any other relief(s) that this honourable court may deem fit just and to grant.

The application is supported with an affidavit affirmed by the applicant. On the other hand, the respondents had the joint counter affidavit to contest the application.

In this application Mr. Kuwengwa Ndonjeka learned advocate represented the applicant while the respondents enjoyed the services of Mr. Abdallah Kilobwa the learned counsel. By consent of the parties, this court ordered the application be disposed of by way of written submissions as summarized beneath.

In the submission of Mr. Ndonjeka in support of the application he urged the court to grant the prayers sought as there are sufficient reasons for the court to grant the extension of time to file the appeal.

Mr. Ndonjeka further added, the applicant could not lodge the appeal

within time because she was not supplied with certified copies of judgment and decree within time. He contended that, in terms of Order XXXIX Rule 1(1) of the Civil Procedure Code [CAP 33 R.E 2019], (the CPC), judgment and decree are necessary documents to be attached to the memorandum of appeal to be considered competent.

To arguments his point, the counsel for the applicant referred to the case of **Boghal v. Karsan** (1953) 20 EACA which stressed on the need to comply with the requirements prescribed by the statute.

It was submitted further that, the applicant through Central Law Chambers wrote a letter requesting for certified copies of judgment and decree but it was until 16th January 2023 when the applicant was supplied with the said documents. By the time the applicant was supplied with the said documents, the time to lodge the appeal had already expired.

It was the argument of Mr. Ndonjeka that there was no carelessness, inadvertence, laxity or indolence on the part of the applicant. Further to that he submitted that, there are legal and factual issues that need the determination of this court as the trial tribunal did not address them.

He made reference to the case of **Ndizu Ngassa v. Massisa Magasha**

[1999] TLR 202. That, this being the first appellate court it is tasked to re-assess the evidence of the trial tribunal. Thus, he urged the court to grant an extension of time so that the court can have a chance to re-assess the evidence on record.

On reply submission Mr. Kilobwa opposed the application contending that the applicant has not shown good cause to convince the court to grant the extension of time to file the appeal out of time.

He submitted further that, the non-supplying of the copies of judgment and decree timely was not true, since immediately after the pronouncement of the judgment the same were ready for collection on the same date.

Mr. Kilobwa contended that, the applicant has not advanced any reason as to why she failed to collect the copy of judgment and decree on the date they were pronounced.

He then claimed the applicant has not accounted for the period of 53 days from 24/11/2022 when the impugned decision was delivered to 16/1/2023 when copies of judgment and decree. It was said, the instant application was lodged on this court on 27/1/2023 after the expiry of 11 days from the date the applicant was supplied with the copies of

judgment and decree, the period not accounted for by the applicant.

Mr. Kilobwa also counter argued that, the applicant has not pointed out any irregularity apparent on the proceedings and judgment. He urged the court to dismiss the application as the applicant has not demonstrated good cause. On this point he cited the case of **Whipaz v Amina Salum & 2 others** Civil Application No. 296/18 of 2021 (unreported).

On rejoinder submission, Mr. Ndonjeka maintained that, the appellant was not supplied with necessary documents in time. Her being a lay person she had to look for an advocate to assist her.

Having read the parties' submissions, also going through the chamber summons and the opposing affidavit, in determining this application the sole issue for determination is whether the applicant has advanced sufficient reason for this court to grant the application.

This application has been preferred under Section 41 (2) of the Act. The said provision reads;

(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

*Provided that, the High Court may, **for the good cause, extend the time for filing an appeal** either before or after the expiration of such period of forty five days. [Emphasis added].*

From the foregoing provision of the law, it is imperative that for the court to grant an application for extension of time to file the appeal the applicant is required to show good cause. The provision referred above does not define what constitutes good cause.

However, in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 Court of Appeal of Tanzania at Arusha (unreported) stated several factors can be considered in determining whether the applicant has advanced good cause. The factors are;

(a) The applicant must account for all the period of delay

(b) The delay should not be inordinate

(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

In the instant application the impugned judgment which the applicant seeks to challenge through the appeal was delivered on 24/11/2022. This means that the applicant was required to lodge her appeal within 45 days from the date of the decision, that is until on or before 9/1/2023.

Mr. Ndonjeka arguments were that, the applicant could not file the appeal within time because she was not supplied with the copies of the judgment and decree timely until on 16/1/2023. Whereas, the respondents maintained that the judgment and decree were ready for collection on the date it was delivered i.e 24/11/2022 and the applicant should have collected them on that day.

I have carefully gone through the affidavit in support of the application, on paragraph 4 the applicant avers that she requested for the copies of

judgment and decree on 25/11/2022, but she received only the judgment. Again, on paragraph 5 of the affidavit, the applicant avers that she requested for the copy of the decree but it was supplied to her on 16/1/2023. It therefore clear that, the judgment was ready for collection immediately after it was pronounced.

The respondents strongly contended that both the judgment and decree were ready for collection on 24/11/2022. The applicant was said to have not collect them immediately.

The applicant's counsel was expected to recount on this argument on his rejoinder submission but he maintained that the applicant was just the lay person who had to look for an advocate to assist her.

However, the affidavit in support of the application is silent as to the steps taken by the applicant after she was supplied with the copy of the judgment. There, is no proof that she ever wrote a letter requesting for the copy of decree. I have also gone through the letter referred on paragraph 4 of the affidavit which has been annexed as T-2. There is no proof of the said letter to have been received with the tribunal as it does not bear its stamp as evidence to have been received.

It is settled law that, the period within which one applies for judgment, decree or proceedings to be excluded from computing the time as provided for under Section 19(2) of the Law of Limitation Act [CAP 89 R.E 2019], (the LLA).

Such period is automatically excluded, but subject to the conditions stipulated in the case of **Alex Senkoro & 3 others v. Eliambuka Lyimo (as administrator of the estate of Fredrick Lyimo deceased)** Civil Appeal No. 16 of 2017 (unreported) where the Court of Appeal observed that;

"We need to stress what we stated in the above case that the exclusion 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 LLA these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was requested and the date of the supply of the requested document.

In the instant application as there is no proof that the applicant took any initiative to request for the copy of decree, she cannot benefit from the

exclusion of the period from the date the impugned judgment was delivered to the date the same was supplied to her.

Since, the applicant was required to lodge her appeal on or before 9/1/2023 and the instant application was lodged before this court on 27/1/2023, thus the applicant should have accounted for the period running from 9/1/2023 to 27/1/2023.

On paragraph 6 of the affidavit the applicant deposed that, she was the lay person and had to look for an advocate to assist her in preparing the application. However, the affidavit in support of the application is silent as to when she started to look for the advocate. Considering that there was no affidavit from her advocate to support her assertion.

The need to account for the period of delay was emphasized in the case of **Bushfire Hassan v. Latina Lucia Masaya**, Civil application No. 3 of 2007 (unreported) where it was held that;

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

It is thus clear that, the applicant has failed to account for the period of 17 days running from 9/1/2023 to 27/1/2023. It is for these reasons; I hold that the application lacks merits and it is accordingly dismissed with costs.

It is so ordered.

Dated at Babati this 20th April 2023.



G. N. BARTHY,

JUDGE

20/4/2023

Judgment delivered in the presence of Mr. Kuwengwa Ndonjeka for the applicant, the 1st, 4th, 5th, 6th, 7th and Mr. Abdallah Kilobwa the counsel for the respondents.