

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

MISCELLANEOUS LAND APPLICATION NO. 2 OF 2023

(Arising from Application NO. 46/2019 before the District Land and Housing Tribunal of Babati District at Babati)

ANANIAS FRANCIS KIBUMUAPPLICANT

VERSUS

TPB BANK PLC (TANZANIA COMMERCIAL BANK PLC)..... RESPONDENT

RULING

3rd & 3rd March, 2023

Kahyoza, J.:

This is a ruling in respect of an application for extension of time to allow **Ananias Francis Kibumu** (the applicant) to appeal against the decree and judgment of the District Land and Housing Tribunal (the **DLHT**).

The applicant sued **TPB BANK PLC** (the Respondent) before the DLHT, which decided in favour of found **TPB BANK PLC**. It dismissed **Ananias Francis Kibumu's** application meritorious and dismissed it.

Aggrieved, **Ananias Francis Kibumu** deposed in his affidavit and submitted orally that he delayed to appeal as the DLHT gave him a copy of a decree on the 11th January, 2023 when the period of appeal had expired. Desirous still to appeal, **Ananias Francis Kibumu** institute the current application for leave to appeal out of time.

The respondent through the service of Ms. Loveneer, the learned state attorney, without filing a counter affidavit opposed the application. She submitted that the applicant did not attach copy of the impugned judgment. She did not, however support her argument with the provision of the law which require and a person applying or extension of time to attach a copy of the judgment that person intends to appeal against.

Given, the argument and counter argument, there is only one issue whether the applicant has disclosed sufficient reason for extension of time. Before I set to answer the issue, I find it important to narrate basic undisputed facts and the law relevant to this application as follows that; the **DLHT** tribunal delivered judgement, which in the presence of the applicant on 18.11.2022. As the record bears testimony, the judgment was ready to be collected immediately after the same was delivered as the DLHT typed the judgment. It was not a handwritten judgment. However, the record is silent as on which date a copy of the decree was ready to be collected. The record shows that the chairman of the DLHT certified the decree on 11.01. 2023. It is undisputed fact that an appeal to this Court from a decision of the DLHT in exercise of its original jurisdiction is governed by subrule (1) of rule 1 of Order XXXIX of the Civil Procedure Code, [Cap. 33 R.E: 2019] (the CPC) which applies *mutatis mutandis* to such appeals. Rule 1 of Order XXXIX of the CPC states that-

*1.-(1) Every appeal shall be preferred in the **form of a memorandum** signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and the **memorandum shall be accompanied by a copy of the decree appealed from and (unless the Court dispenses therewith) of the judgment on which it is founded.***

The law as it stands required the applicant to attach a copy of the judgment and decree to the memorandum of appeal. It is also settled law based on the provision of the Law of Limitation Act, that delay to obtain a copy of judgment, ruling or decree or order to be appealed against, where the law makes it mandatory to attach it to a petition or memorandum of appeal, constitutes a sufficient reason for extension of time. Section 19 (2) of the Law of Limitation excludes a period taken to obtain a copy of judgment appealed from or against. It provides-

"(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."

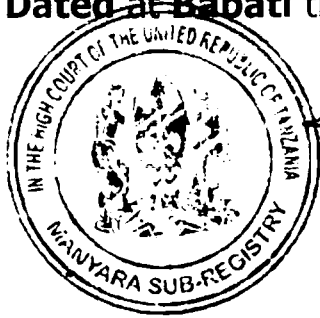
The applicant lodged the instant application on 13.01. 2023, that is 2 days from the date the decree was certified. He had 42 days within which to

appeal. It was a legal misdirection for the applicant to institute the instant application.

Eventually, I see no apparent reason for the applicant to apply for extension of time as he had 42 days when he instituted the appeal as time started ticking on the day he obtained copy of the decree. Since he is now out of time while pursuing an application, which was uncalled for, I will extend time for period of 42 days, the period which was still pending at the time he lodged the instant application. The time extended runs from the date of this ruling. The costs shall be borne by the judgment debtor in the intended appeal. If no appeal is lodged the applicant shall bear the costs.

I order accordingly.

Dated at Babati this 3rd day of May, 2023.



A handwritten signature in black ink, appearing to read "John R. Kahyoza", written over a horizontal line.

**John R. Kahyoza,
Judge**

Court: Ruling delivered in the presence of the applicant and Ms. Loveneer Pylimbe, State Attorney for the Respondent. B/C. Ms. Fatina present.

A handwritten signature in black ink, appearing to read "John R. Kahyoza", written over a horizontal line.

John R. Kahyoza, J. 3/5/2023