

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

**IN THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. LAND APPEAL NO. 58 OF 2023**

*(From the Decision of the District Land and Housing Tribunal of Geita at Geita in Land Case Appeal No. 78 of 2018)*

**NJIGA SIMEO (Administrator of the  
Estate of the Late Tito Mathias Mpuya).....1<sup>st</sup> APPLICANT**

**KULWA MAHOGEJA.....2<sup>nd</sup> APPLICANT**

**NJIGA SIMEO.....3<sup>rd</sup> APPLICANT**

**VERSUS**

**ANTHON CHOTA.....1<sup>st</sup> RESPONDENT**

**ELIAS CHOTA.....2<sup>nd</sup> RESPONDENT**

**COSMAS GANIKO.....3<sup>rd</sup> RESPONDENT**

**KATABARO SHANG'WABO.....4<sup>th</sup> RESPONDENT**

**RULING**

*14<sup>th</sup> September & 20<sup>th</sup> October, 2023.*

**ITEMBA, J.**

This court is called upon to exercise its discretion and grant an extension of time within which to file an appeal before this court. The intended appeal is against the decision issued by the District Land and Housing Tribunal for Geita, herein the Tribunal, in Application No. 78 of 2018 delivered on 18/11/2022, in favor of the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

The application is preferred under the section 41(2) of the Land Disputes Act Cap 216 R.E 2019. It is supported by two affidavits; the joint



affidavit of Njiga Simeo and Kulwa Mahogaja and the affidavit of Zuhura Ally Omary, a court clerk of District Land and Housing Tribunal for Sengerema. The respondent has opposed the application through a joint counter affidavit of Anton Chota and Elias Chota.

At the hearing of the application, Mr. Masoud Mwanaupanga, learned advocate fended for the applicants against Mr. Kadaraja Justine, learned counsel for the respondents. The application was heard in the absence of the 3<sup>rd</sup> and 4<sup>th</sup> respondents who did not show up in court despite being served through publication.

In his submission Mr. Mwanaupanga told the court that the grounds for delay are that the judgement was issued on 18/11/2022 but the applicants had to make follow ups of the copy of judgment between 1/12/2022 and 14/4/2023. That, they wrote a letter on 7/12/22 (annexure A) and by the time they were supplied with the copy of judgment, 45 days stipulated by law have already lapsed. He added that section 19(2) of the Law of Limitation Act empowers the court to exclude the time within which the applicants were making follow ups of courts records. He supported his argument with the cases of **Grace C. Lubambey vs CMC Automobile**



**Limited** Civil Appeal No. 316 of 2020, Court of Appeal, Dar es salaam and **Said Peter Katakula v Nobert Mahigila Gwebe Land Appeal** No. 37 of 2019 High Court, Mwanza. The second affidavit of Zuhura Ally Omary is supporting the applicant's affidavit that, in 2018 there were administrative challenges and scarcity of Tribunal's chairmen which led to all the Land Disputes from Sengerema to be heard in Geita. That, the applicants made several follows ups of their judgement at the Tribunal, in vain. That, she handled the applicants with their copy of judgment on 14/4/2023.

Submitting in rebuttal, Mr. Kadaraja argued that section 19(2) of the Law of Limitation Act Cap. 89 RE: 2019, relied by the applicant is relevant to applications for leave, review or appeals and it does not cover applications for extension of time. He added that if the judgment was handed to the applicants on 14/4/2023 they were supposed to account for each day of delay between that date and 5/7/2023 when the application was made, failure to that shows that the applicant was negligent.

In his brief rejoinder, Mr. Mwanaupanga stated that the issue of accounting for each day of delay is not from the counter affidavit but a submission from bar. He added that they showed in the affidavit that the



application was filed on 26/6/2023 following an order for a fresh filing made by this court on 14/6/2023. He finalized that, in between there are only 12 days which are reasonable for preparing a new application.

The issue to be determined herein is whether the application has merit. Section 41(2) of the The **Land Disputes Courts Act** [CAP. 216 R.E. 2019] states thus: -

*41(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 supplied).*

Furthermore, section 19(2) of **The Law of Limitation Act** [CAP. 89 R.E. 2019] is to the effect that: -

*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.’*



The law is settled that applications for extension of time are granted upon court's discretion that the applicant has presented a credible case and he has acted in an equitable manner. The insight behind this requirement has been stated in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, CAT-Civil Application No. 2 of 2010 (unreported), where the key conditions on the grant of an application for extension of time were laid down. These 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 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 illegality of the decision sought to be challenged."*

As stated earlier on, the applicant's grounds are that the trial court delayed in issuance the copy of judgment. According to Zuhura Omary, the court clerk's, the judgment was issued to the applicant on 14/4/2023. On



22/4/2023 which is only 8 days later, they filed an application for extension of time which was struck out on 14/6/2023 with leave to refile. Thereafter, this application was filed on 26/6/2023. The respondent is incorrect by referring to a wrong date of filing because the application was refiled on 26/6/2023. In respect of section 19(2) of the law of limitation Act, I agree with the applicant that it applies even to application for extension of time like the present one. See also the cited case of **Grace C. Lubambey v CMC Automobile Limited** (supra). Therefore, in terms of section 19(2) of the Law of Limitation Act, the time between 18/11/2022 and 14/4/2023 is excluded from computing the time of limitation. As for the remaining time between 14/4/2023 and 26/6/2023, the applicant has managed to account for the delay and the 12 days used for refiling this application is reasonable time.

That said, the circumstances of this case reveal sufficient cause to exercise my discretion to extend time for the applicants to file their appeal. Accordingly, I grant the application and the applicants have twenty-one (21) days within which to institute their appeal.



Costs to be in the cause.


It is so ordered.

DATED at **MWANZA** this 20<sup>th</sup> day of October, 2023.



  
**L. J. ITEMBA**  
**JUDGE**

Ruling delivered this 20<sup>th</sup> day of October in the presence of Mr. Masoud Mwanaupanga and Mr. Kadaraja Justine learned counsels for the applicant and respondent respectively and Ms. Glady Mnjari, RMA.

  
**L. J. ITEMBA**  
**JUDGE**