

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 5 OF 2022

**(C/F Land Application No. 171 of 2021 in the District Land and Housing Tribunal of
Arusha at Arusha)**

NAREVIL LOWASA.....APPLICANT

VERSUS

LOWASA SANGIDA.....1ST RESPONDENT

TEETE LOWASA.....2ND RESPONDENT

RULING

5/10/2023 & 30/10/2023

GWAE, J

The applicant has filed this application seeking an extension of time to file her appeal to this court against the decision of the District Land and Housing Tribunal for Arusha at Arusha (trial tribunal) in Application No. 171 of 2021 dated 31st October 2022.

The gist of this application is as follows; the applicant filed a suit against the respondents, the 1st respondent and 2nd respondent, who are her husband and co-wife respectively. The judgment of the trial tribunal was pronounced on 31st day of October 2022 in favour of the respondents herein. Dissatisfied with the decision, the applicant wishes to appeal to this court to challenge the trial tribunal's verdict nonetheless he perceived

to have been out of 45 days from the date of the judgment. Hence, this application for enlargement of time.

In her affidavit, the applicant stated that her delay to appeal in time was caused by the delay to obtain the copy of the decree . According to her the judgment intended to be appealed was delivered on 31st October 2022 while on 5th November 2022 she wrote a letter requesting to be supplied with copies of the judgment, proceedings and decree. On 25th November 2022 she went to collect his copy of the judgment but she was not availed with the copy of the decree and on 19th December 2022 he wrote a reminder letter to the trial tribunal to be supplied with the copy of the decree. On 15th December 2022, she sought for legal advice from his advocate who advised him to file this application.

The respondents challenged the application through their counter affidavit where the 1st respondent alleged that the applicant could file her appeal in time but did not make a follow up of the copies of the judgment. On her part, the 2nd respondent strongly stated that the applicant has not sufficiently proved that there were remainders and follow ups of the said copies of the judgment and decree.

When the matter was called for hearing, the applicant and the 1st respondent appeared in person unrepresented, on the other hand the 2nd

respondent was represented by the learned counsel one Mr. Duncan Joel Oola. With leave of the court, the application was disposed of by way of written submissions.

Supporting the application, the applicant principally reiterated her affidavit and added that, she could not file his appeal without attaching the copy of the decree and therefore since she was not supplied with the said copy of the requisite decree on time he urged this court to grant her application. She also added that, even at the time of filing this application she had not yet been supplied with the said copy as the same was supplied to him on 17th January 2023.

Opposing the application, the 2nd respondent's submission was to the effect that the applicant has not adduced good reasons for extension of time. The respondent went further to state that even the letter attached by the applicant in his application does not indicate that the same was received by the tribunal as there was no rubber stamp and date. Moreover, the respondent stated that the applicant has not attached other reminder letters, which she alleged to have written to the tribunal and therefore there is no proof as to whether the applicant wrote the letters to remind the tribunal. Furthermore, the respondent also stated that even the decree is nowhere to be seen as the same was not attached to the

application and in that regard the applicant has failed to account for the days of delay. It was therefore the view of the 2nd respondent that, the applicant has failed to give sufficient reasons, which will guide this Honourable Court to grant extension of time sought.

It is common ground that in applications for extension of time is entirely in the discretion of the court to either grant or refuse the same. However, the discretion has to be exercised judicially and the overriding consideration is that there must be sufficient cause for doing so. See the decision in the case of **Yusuph Same & another vs Hadija Yusuph**, Civil Appeal No. 1 of 2002 (Reported Tanzlii).

In the matter at hand, provisions of section 110 of the Evidence Act Cap 6, Revised Edition, 2019 conveniently guide me towards the appropriate decision to take. The law of Evidence places a burden of proof upon a person who desires a court of law to give a judgment in his favour. Therefore, the person who asserts the existence of facts must prove that the asserted facts do really exist.

The applicant herein alleged that his delay was caused by the delay to obtain the copy of the decree. Moreover, it was his further allegation that she wrote several letters to remind the tribunal to be supplied with the said copy but in vain. The appellant's assertion is to the effect that,

she was availed with the copy of decree on 17th January on 17th January 2023 whereas she physically and duly filed this application on the 9th day of January 2023. In my decided view, provisions of section 19 of the Law of Limitation Act, Cap 89, Revised Edition, 2019 (LLA), rescue the present applicant. Section 19 (1) and (2) of the LLA provides and I quote;

"19 (1) In computing the period of limitation for any the day from which such period is to be computed shall be excluded.

(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."

Guided by the above quoted subsection (2) of section 19 of LLA, there is an exclusion of accrual of action when proved that the applicant/ a party applied for copies of decree and judgment for appeal purpose. The legal requirement to accompany a Memorandum of Appeal in the High Court for matters that commences from District Court, Resident Magistrate's Court or DLHT is provided for under Order XXXIX Rule 1 of CPC, which reads.

*"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.**"*

In our present application filed on 9th January 2023 and since the sought decree, which a requisite document for an appeal before this court to accompany the Memorandum of Appeal, was not yet obtained, it follows therefore the applicant applied for extension of time before lapse of the time for appeal since the exclusional doctrine is applicable in the circumstances. Section 14 (1) of the LLA provides;

*"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, **and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.**"*

(Emphasis supplied)

Guided by provisions of Order XXXIX Rule 1 (1) of CPC, section 14 (1) of LLA and section 19 (2) of LLA cited above, the applicant's assertion

that, at the time of filing this application he was not yet availed with the sought copy of the decree, constitutes good cause justifying this court to grant extension of time.

In the final analysis, it is my decided view that, the applicant's application is meritorious. The sought Leave to appeal out of time is therefore granted. The intended appeal shall be filed to this court within twenty-two (21) days from the date of this ruling. Costs of the application shall be in the course.

It is so ordered.

DATED at ARUSHA this 30th day of October 2023




MOHAMED R. GWAE

JUDGE