

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY  
AT MOSHI**

**MISCELLANEOUS LAND APPLICATION NO. 59 OF 2022**

*(Arising from the Decision of the District Land and Housing Tribunal of Moshi at Moshi dated  
29<sup>th</sup> October, 2022 in Application No. 208 of 2017)*

**ADONIKA AMOS LEMA SWAI ..... 1<sup>ST</sup> APPLICANT**  
**OBERLIN GODFREY LEMA ..... 2<sup>ND</sup> APPLICANT**  
**EMMANUEL ALBERT LEMA ..... 3<sup>RD</sup> APPLICANT**  
**ELIZABETH ALBERT LEMA ..... 4<sup>TH</sup> APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF  
CATHOLIC DIOCES OF MOSHI ..... RESPONDENT**

**RULING**

19<sup>th</sup> October & 6<sup>th</sup> December, 2023

**A.P.KILIMI, J.:**

This is the ruling in respect to application for extension of time to file appeal lodged by the applicants hereinabove in this court under Section 41(2) of the Land Disputes Courts Act [CAP 216 R.E 2019]. The applicants being aggrieved intend to appeal against the decision of the District Land and Housing Tribunal for Moshi in Application No. 208 of 2017 if this application is allowed.

The applicants have moved this court by way of chamber summons supported by affidavit of one Elizabeth Albert Lema who is among the applicants duly instructed by the other applicants as she avers at paragraph 2 of the said affidavit.

At the hearing of this application the applicants was represented by Mr. Fred Kimaro learned advocate and the respondent enjoyed the service of Mr. Aristides Ngawiliau learned advocate.

The counsel of the applicant argued that, the base of this application comes from the decision of Application No 208 of 2017 before the District Land and Housing Tribunal of Moshi which was delivered on 29/08/2022. Being aggrieved with the decisions on 30/08/2022 the applicants wrote a letter to the Tribunal seeking for the copy of judgment which they received on 07/11/2022. Hence it was already out of time for them to file an appeal. The counsel further submitted that basing on section 19(2) of the Law of Limitation Act, the time spent for waiting for the copy of judgment should be excluded. The applicant spent only 9 days from the date they received a copy of judgment to the date of filing this appeal, and the time was used for preparing the documents for this appeal therefore this court should count this as a reasonable ground to extent time. To buttress his argument, he

cited the case of **Republic vs. Yona Kaponda and 9 Others**, 1987 TLR

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In reply the Mr. Ngawiliau counsel for the respondent submitted that, the affidavit of the applicants did not state the number of days delayed, nor did not count each day of delay which is contrary to what was stated in the case of **Mbolile Madimanya (The Administrator of the Late Madinganga Mudanga vs. Kazimili Petro (Administrator of Estate Venance Mayanga** Civil Application No. 415/08/2018. But he also contended that applicants were already lodged their intension to appeal. Therefore, they had ample time to prepare appeal even without Judgment and Decree. Since they were represented by Demo Law Associates Firm therefore, they had enough time promptly to institute their appeal. Also he rejects the prayer for cost as there is no any injustices caused by the respondent.

In rejoinder the counsel for the applicants submitted that in para 11 of the affidavit states they were late because of unnecessary procedure to file an appeal, and since it's the discretion of this court to grant extention of time therefore they pray for the same as it is the applicants who will suffer than the respondent if the prayer will not be granted. Also insisted that under

section 19(1) of the Law of Limitation Act excludes the time to wait for copy of judgment therefore for one to appeal must have a copy of judgment.

Having gone through the submissions and affidavit of both parties, this court stands with a trite law that in order for the Court to extend time as prayed by the applicants, sufficient cause must be shown, and further to that, the powers of extending time for purpose of initiating any court proceedings, is entirely exercised on the discretion of the court but the same must be exercised judicially. See **Royal Insurance Ltd vs. Kiwengwa Strand Hotel Ltd**, Civil Application No. 11 of 2009 (unreported).

According to the law governing land matters, which is the Land Disputes Courts Act, in respect to extension of time to appeal, section 41 provides as follows;

*"41 (1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.*

*(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]

The appellant's counsel based his submission under section 19(2) of the Law of Limitation Act, Cap 89 R.E 2019, In my view it is true the above provision also excludes the period of time requisite for obtaining a copy of the decree or order sought to be appealed, also for easy of reference I reproduce the said provision hereunder;

"19. Exclusion of certain periods

*(1) In computing the period of limitation for any proceeding, 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."*

[Emphasis supplied]

The facts according to applicants affidavit shows that the decision of DLHT was delivered on 29/08/2022 and on 30/8/2022 the applicants wrote a letter seeking for the copy of judgment which they received on 7/11/2022 and they filed their application before this court on 16/11/2022.

From this, I am in line with the applicants that since the letter showing intention to appeal was filed a day after the decision and in that letter the applicants sought for the copy of judgment to file an appeal, to me the applicants exercised diligent towards their wish to appeal. It is undisputable that the copy of judgment was received to the applicants 7/11/2022. In the circumstance therefore, this was the date the time limitation for an appeal started to run basing on section 19(2) of the Law of Limitation Act as above.

The argument of the respondent counsel that since applicants had an advocate devoid of merit since he could have not prepared an appeal without having of the copy of judgment and in respect to account on each day of delay, in their affidavit the applicants states that 9 days delayed were for preparation of the documents for appeal after they received appeal. Thus, I have asked whether these days used for prepare documents were justifiable.

In **Lyamuya Construction Company Ltd vs. The Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) among the four factors that were considered as-forming good cause include diligence and the length of the delay not being inordinate.

The present application I have considered that after the applicants received a copy of judgment on 7/11/2022 they filed their appeal on 16/11/2022. Thus, the delay was 8 days which in my view as said was for purpose of prepare documents for filing, I am settled the delay was not inordinate.

On the premises and from what I have endeavoured to discuss above, I am satisfied that the applicants have established good caused for this application to be granted. Consequently, I find merit in this application and allow it. The applicants are allowed to file their appeal within thirty (30) days from this day of ruling. In the circumstances each party to bear his/her own costs.

It is so ordered.

**DATED** at **MOSHI** this 6<sup>th</sup> day of December 2023.



X

JUDGE

Signed by: A. P. KILIMI