

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

**MOROGORO SUB-REGISTRY**

**AT MOROGORO**

**MISC. CIVIL APPLICATION NO. 61 OF 2023**

*(Arising from the judgement of the District Land and Housing Tribunal of Morogoro at Morogoro in Land Application No. 24 of 2020)*

**SAUDA MOHAMED MKUNGU (As an Administratrix of the Estate of the Late Mohamed Mkungu) ..... APPLICANT**

**VERSUS**

**WARDA ALLY ISSA ..... 1<sup>ST</sup> RESPONDENT**

**ISSA MGAYUKE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

25/04/2024 & 28/05/2024

**KINYAKA, J.:**

The applicant, Sauda Mohamed Mkungu moved the Court for an order of extension of time to file an appeal against the decision of District Land and Housing Tribunal of Morogoro at Morogoro hereinafter "the Tribunal" in Land Application No. 24 of 2020.

In her affidavit in support of the application, the applicant contended that the delay to lodge her appeal was occasioned by the delay by the Tribunal to supply her with a copy of the judgement that was delivered on 25<sup>th</sup> August 2022 despite lodging two letters of request for the same. She contended that

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a copy of the judgement was availed to her after the lapse of time to lodge an appeal to this Court.

In their joint counter affidavit sworn by Mr. Igans Seti Punge, Advocate for the respondents, the respondents opposed the application by contending that the applicant has not demonstrated reasonable and sufficient cause for delay in her affidavit. They further contended that the applicant had previously lodged an appeal against the decision of the Tribunal but the same was struck out for being out of time.

When the application was called on for hearing on 25<sup>th</sup> April 2024, the Court ordered the parties to argue the application by written submissions. While the applicant lodged her submissions on time, the respondent did not.

Submitting in support of the appeal, the applicant adopted the contents of her affidavit as forming part of her submissions. She submitted that immediately after delivery of the decision of the Tribunal, she instructed her counsel to apply for copies of the judgement and decree but her advocate did not act promptly. She then lodged the request for judgement and decree on 9<sup>th</sup> September 2022 which were supplied on 15<sup>th</sup> October 2022, six days after the lapse of 45 days but her advocate lodged an appeal out of time on



20<sup>th</sup> October 2022, contrary to section 41(2) of the Land Disputes Court Act Cap. 216 R.E. 2019 hereinafter "the Land Disputes Court Act".

She contended that as copies of the judgement were supplied late, it was wrong for her advocate to concede to the preliminary objection on time limitation raised by the respondents in Land Appeal No. 123 of 2022 as according to her, section 19(2) of the Law of Limitation Act Cap. 89 R.E. 2019 hereinafter "the Law of Limitation Act" allows automatic exclusion of time spent while waiting for copies of judgement and decree. She relied on the decisions in the cases of **Mohamed Salimini v. Jummanne Omary Mapesa, Civil Appeal No. 345 of 2018** (unreported) and **Grace C. Rubambey v. CMC Automobiles Limited, Civil Appeal No. 316 of 2020** which cemented the automatic exclusion of the period spent by a party waiting for copies of judgement and decree of the lower court.

The applicant proceeded that from 4<sup>th</sup> May 2023 when her previous appeal was struck out to 23<sup>rd</sup> October 2023 when the present application was filed in Court, she was struggling with her advocate to take necessary steps to file her appeal culminating to filing of the present application. She concluded by submitting that she has demonstrated good cause to warrant this Court



to exercise its discretionary powers to extend time within which she can lodge her appeal. She prayed for the application to be granted.

Having heard the submissions of the applicant and considered her affidavit and the counter affidavit filed by the respondents, I am now set to determine whether the application is meritorious.

The Court's mandate to grant an order for extension of time involve discretionary powers which are to be exercised judiciously and upon the applicant showing good, reasonable or sufficient cause for delay. [See the decision of the Court of Appeal in the case of **Murtaza Mohamed Raza Virani Another v. Mehboob Hassanali Versi, Civil Application No. 448 of 2020** (unreported), on page 7 through 8].

It is imperative in the present application for this Court to be satisfied if the applicant has demonstrated good cause to warrant this Court's exercise of its discretionary powers to extend time within which she may lodge her appeal against the decision of the Tribunal in Land Application No. 24 of 2020 delivered against her on 25<sup>th</sup> August 2022.

In determining good cause, factors such as the applicant's account for all the period of delay; the inordinate delay; the applicant's diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he

intends to take; and 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, are all considered to constitute good cause for delay. [See the decision of the Court of Appeal 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** (unreported)].

In the present application, the applicant has presented two grounds for her delay in her submissions; the first being the time she spent waiting to be supplied with copies of judgment in Land Application No. 24 of 2022 which she procured on 15<sup>th</sup> October, 2022, six days after the expiry of time of limitation for lodging the appeal; and secondly, her then advocate's reluctance to take steps to initiate the appeal.

In relation to the first ground, as rightly submitted by the applicant, section 19(2) and (3) of the Law of Limitation Act provides for an automatic exclusion of time spent by the applicant in obtaining a copy of the impugned judgment.

The section stipulates:-

*"(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for*

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*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.*

*(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall be excluded."*

Expounding more on the above provision, the Court of Appeal had the following to underscore in the case of **Alex Senkoro & Others v. Eliambuya Lyimo, Criminal Appeal 16 of 2017** on page 12:-

*"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 the 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."*

Reading the above provision in connection with the applicant's submission in relation to her justification as to her enjoyment of the automatic exclusion,

I disagree with the applicant's argument that the time she spent was automatically excluded as provided for under section 19(2) of the Law of Limitation Act. I say so because, as hinted earlier on above, in order for her to enjoy and benefit from the said right, the applicant was duty bound to prove before the Court the record of the dates of the critical events for the reckoning of the prescribed limitation period to wit; the date when the impugned judgment was delivered, the date in which the letter requesting for the copies of the same was written and the date in which the copies were availed to the applicant.

In the present application, it is undisputed that the judgment of the Tribunal was delivered on 25<sup>th</sup> August 2022 and that on 9<sup>th</sup> September 2022, the applicant herein wrote a letter to the Tribunal requesting to be supplied with copies of the same. However, it is evident that the applicant has failed to provide cogent proof as for the date in which she collected the said copies from the Tribunal. In her submissions, the applicant contended to have been supplied with the copies on 15<sup>th</sup> October 2022, but the copy of judgment attached to her affidavit as Annexure "A1" has not substantiated her contention as it is in want of certification of the same. In resolving as to whether the date of the certification of judgment could have been a good



ground for seeking extension of time to lodge an appeal, the Court of Appeal in the case of **Bukoba Municipal Council v. New Metro Merchandise, Civil Appeal No. 374 of 2021** held as follows:-

*"We are therefore satisfied that, in the High Court, there was no dispute as to when the appellant was supplied with a copy of the judgment. In any event, we wish to reiterate what we said in the case Alex Senkoro & 3 Others v. Eliambuya Lyimo (as administrator of the estate of Frederick Lyimo, deceased) (supra) that the date of certification is the date of reckoning the prescribed ninety days limitation period for lodging an appeal to the High Court."*[Emphasis Added].

From the above illustrated position of the law, I am of a firm conclusion that the period the applicant spent in waiting for the copy of judgment shall not be automatically excluded. In that regard, the applicant has failed to account for the delayed days from 25<sup>th</sup> of August 2022 when the judgment of the Tribunal was pronounced up to 20<sup>th</sup> October 2022 when she filed Land Appeal No. 123 of 2022 to this Court which was struck out on 4<sup>th</sup> May 2023 for being time barred.





Even by assuming that the applicant's delay to file his appeal from the date of delivery of the decision to the date of filing her Land Appeal No. 123 of 2022 had been penalized by this Court on 4<sup>th</sup> May 2023, the applicant has miserably failed to account for the period of delay from 4<sup>th</sup> May 2023 when the Land Appeal No. 123 of 2022 was struck out to 23<sup>rd</sup> October 2023 when the present application was lodged.

The applicant has explained in her submissions that the delay from 4<sup>th</sup> May 2023 to 23<sup>rd</sup> October 2023 when she filed the present application was occasioned by the reluctance of her advocate to take steps to initiate the appeal. I disagree with the contention for two reasons. The first is that the facts were not stated in the applicant's affidavit in support of the application. The second is that even if the same were contained in the affidavit, it would not have convinced me as the applicant had an avenue to find another advocate to take necessary steps to prosecute her appeal or file the present application immediately after her Land Appeal No. 123 of 2022 was struck out on 4<sup>th</sup> May 2023.

Furthermore, the applicant has not disclosed in her affidavit the reasons for her tolerance with the unknown advocate who was not ready to act for her before filing her Land Appeal No. 123 of 2022 and after the same was struck

out on 4<sup>th</sup> May 2023 which occasioned the delay of more than five months until 23<sup>rd</sup> October 2023 when she lodged the present application.

In view of my above observations, I find the applicant to have failed to demonstrate good, reasonable or sufficient cause to warrant the exercise of the discretionary powers of this Court to grant an order for extension of time. Consequently, I dismiss the application for want of merit. Considering the circumstance of the applicant, I make no order as to costs.

It is so ordered.

Right of appeal fully explained.

**DATED** at **MOROGORO** this 28<sup>th</sup> day of May 2024.

  
H. A. KINYAKA

JUDGE

28/05/2024

