

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

**MISC. LAND APPLICATION NO. 57 OF 2023**

*(Arising Land case No.104 of 2017 from District Land and Housing Tribunal of Babati)*

**HALIMA MOHAMED** (*Administratrix of the Estate of  
the late Hawa Mohamed Gwandi*) .....**APPLICANT**

**VERSUS**

**REGISTERED TRUSTEES OF THE GREAT  
COMMISSION CHURCH OF TANZANIA** ..... **RESPONDENT**

**RULING**

*15<sup>TH</sup> December, 2023 & 31<sup>st</sup> January 2024*

***Kahyoza, J.:***

This is an application for extension of time to file an appeal. The record shows that the District Land and Housing Tribunal (the **DLHT**) delivered its judgment on 25. 5. 2023. Aggrieved, **Halima Mohamed**, the applicant wrote a letter to request for the certified copy of the judgment. She contended that she obtained the copy of the judgment after the time to appeal expired. She instituted the current application.

The issue is whether the applicant has adduced sufficient reason for delay. The applicant's ground for extension of time is that the DLHT supplied him the copy of the judgment after time to appeal had expired and the judgment lacks points for determination.

The respondent did not file the counter affidavit to oppose the application. Thus, the application is unopposed. However, the respondent filed a submission to reply to the applicant's submission in support of the application.

The applicant's advocate submitted that there is illegality and that where there is illegality, the court is duty bound to extend time as requested to correct the illegality and put the record clear. He cited the case of **Victoria Real Estate Development Limited vs. Tanzania Investment Bank and Three Others**, Civil Application No. 225 of 2014, CAT (Unreported).

The applicant deponed and the applicant's advocate submitted that the DLHT delivered the judgment on **25<sup>th</sup> May, 2023** and supplied a copy of the judgment to the applicant on **14<sup>th</sup> July, 2023**. After obtaining legal advice the applicant filed the instant application as she was notified that time to appeal had already expired.

The respondent did not file a counter affidavit but filed a written submission to oppose the application. The respondent submitted that the applicant did not adduce sufficient reason for delay.

I wish to start with the settled position of the law, **one**, that failure to file a counter affidavit renders the facts in the affidavit unopposed; and **two**, that the applicant was required to appeal within 45 days from the date of the

judgment or from the date he was supplied with a copy of the judgment and decree. See Section 41(1) of the **Land Disputes Act**, [Cap. 216 R.E. 2019].

The Land Dispute Act is silent regarding the procedures for instituting an appeal from the **DLHT**, thus, the **Civil Procedure Code, Act**, [Cap. 33 R.E. 2019] (the **CPC**) applies. Rule 1(1) of Order XXXIX of the **CPC** provides that an appeal to the High Court must be accompanied by a copy a decree and judgment. For that reason, the applicant would not have appealed without the **DLHT** supplying him a copy of the decree and judgment.

It is undisputed that time spent to obtain a copy is excluded in computing time for lodging an appeal. See Section 19 of the **Law of limitation Act**, [Cap. 89 R.E. 2019]. The period of delay from 25.05.2023 to 14.07.2023 are excluded. It is on record and unopposed that the applicant obtained a copy of the judgment on 14.07.2023. Thus, 45 days within to appeal commenced ticking against the applicant on the 14.07.2023. The applicant filed the current application for extension of time when time had not expired and she had plenty of time to lodge her appeal.

I am aware that of the fact that a person may apply for extension of time before time has expired if he thinks that the remaining time was not sufficient enough for him to take the required action. The applicant averred that she was applying for extension of time because time had expired and not

that the remaining time was not sufficient to process the appeal. For reason, I find that time had not expired as alleged so there was no need to apply for extension of time.

The record bears testimony that, before the applicant filed the application for extension of time, she had spent five days and remained with 40 days within which to appeal. I will extend time for 40 days, which was remaining the time within which to appeal for the applicant to lodge the appeal. I wish to remind the applicant's advocate that time starts running for the date a person obtains a copy of the judgment or when the judgment was ready to be collected. And that time spent to obtain a copy of the judgment is automatically excluded while determining time within which to appeal. See the holding of the Court of Appeal in **Mohamed Salimini v. Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2018 (unreported) and **Alex Senkoro And 3 Other v. Eliambuya Lyimo (As Administrator of the Estate of Frederick Lyimo, Deceased)** Civil Appeal No. 16 of 2017 CAT (unreported). In the latter case, the Court of Appeal held-

*"We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made*

*upon an order of the court in a formal application for extension of time."*

In the end, I allow the application, as time within which to appeal had not expired. I extend time for 40 days which was the period pending within which to appeal from the date of this Ruling. I make no order as to costs.

I order accordingly.

**Dated at Babati**, this day of 31<sup>st</sup> January, 2024



A handwritten signature in black ink, appearing to read 'J. R. Kahyoza'.

**J. R. Kahyoza  
JUDGE**

**Court:** Ruling delivered in the absence of the parties' advocate duly notified.  
Ms. Ombeni (RMA) present.

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza'.

**J.R. Kahyoza  
Judge  
31/01/2024**