

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

**SONGEA SUB-REGISTRY**

**(LAND DIVISION)**

**AT SONGEA**

**MISC. LAND APPLICATION NO. 26829 OF 2023**

*(Originating from the decision of the District Land and Housing Tribunal for Mbinga  
at Mbinga in Land Application No. 04 of 2019)*

**VIANN KOMBA (Administrator of the Estate**

**Of the late Baptist G. Komba) ..... APPLICANT**

**VERSUS**

**FESTO KINUNDA ..... RESPONDENT**

**RULING**

Date of last Order: 24/02/2024

Date of Ruling: 14/03/2024

**U.E. Madeha, J.**

It is worth considering the fact that, through the service of Mr. Makame Sengo, the learned advocate; the Applicant has moved this Court by way of chamber summons made under section 14 (1) of the *Law of Limitation Act (Cap. 89, R. E. 2019)*, seeking for an order for extension of time within which he can file an appeal out of time to challenge the decision of the District Land and Housing Tribunal for

Mbinga in Land Application No. 04 of 2019. The application is supported by an affidavit sworn by the Applicant setting out the reasons for the enlargement of time.

As it can be depicted from the affidavit sworn by the Applicant in support of this application, the reason which has moved him to file this application is the trial Tribunal's delay in supply of the copy of judgment and decree. In his party, the Respondent filed his counter affidavit vehemently resisting the application stating that the Applicant has no good reason which made him to fail to file an appeal on time rather than been not serious in pursuing his right to appeal.

At the hearing of this application, the Applicant was represented by none other than Mr. Makame Sengo, the learned advocate, whereas the Respondent enjoyed the legal services of Mr. Moses Ndunguru, the learned advocate.

Arguing in support of the application, Mr. Makame Sengo prayed for the affidavit sworn in support of the application to be part of the proceedings. He submitted that the trial Tribunal delivered its judgment on 24<sup>th</sup> March, 2023 and on the same date he wrote a letter requesting for a copy of judgment and decree but he was supplied only with a copy of judgment on 20<sup>th</sup> July, 2023. That through the service of his former

advocate, the Applicant insisted his learned advocate to go and pick the copy of the decree but for the reasons well known to his learned advocate he did not do so on time and he decided to find for another advocate to help him to get the copies of the decree and he was supplied with the copy of decree in November 2023 and the time for lodging an appeal was already expired, hence this application. Fortifying his arguments, he averred further that the Applicant failed to file his appeal on time since he was supplied with a copy of decree which was a very crucial document in lodging an appeal while the time to file an appeal was already expired.

Mr. Makame contended further that the Applicant was supplied with the copy of decree too late due to the mistakes done by his former advocate. He referred this Court to the decision made by the Court of Appeal of Tanzania in the case of **James Gidion Kusaga vs. The Registered Trustee of The North Eastern Diocese of the Evangelical Lutheran Church of Tanzania**, Civil Application No. 145/12 of 2023, insisting that the Applicant cannot be punished or blamed for the mistakes done by his former advocate. Lastly, he prayed for the Applicant to be granted with an order for extension of time in order to file his appeal.

Responding to the submissions made by the Applicant's counsel, Mr. Moses Ndunguru prayed for the counter-affidavit filed in Court to be adopted as part of his submission and went on stating that, from the affidavit sworn by the Applicant and the submissions made by the Applicant's counsel, there is no reason for the applicant to be granted extension of time to file an appeal. He stated that the judgment which the Applicant intends to challenge was delivered on 24<sup>th</sup> March, 2023; and according to the provision of section 41 (2) of the *Land Disputes Courts Act* (Cap. 216, R. E. 2019), the time limit to file an appeal for cases originating from the District Land and Housing Tribunal is forty-five (45) days which expired on 8<sup>th</sup> May, 2023. He averred that at the time the Applicant filed his application for extension of time he was late for a period of two hundred and fourteen (214) days and the Applicant has failed to account for the whole period of delay. He added that the law requires the Applicant to account for each day of delay in order to be granted with an order for extension of time. He argued further that the averment made by the Applicant in his affidavit sworn in support of the application that the Chairperson of the District Land and Housing Tribunal was on maternity leave has no proof and even if she was in leave the Applicant has stated clearly that she was back in July 2023 and he was supplied with the copies of judgment in August, 2023 while

they were certified on 24<sup>th</sup> July, 2023. He contended further that it was the Applicant's negligence which made him to fail to file his appeal on time.

Mr. Ndunguru went on submitting that there was no proof on the Applicant's averments that he hired an advocate who requested for a copy of judgment and decree and the learned advocate failed to do so. He stated that to prove that there was an advocate who was hired by the Applicant there must be an affidavit sworn by that advocate but there is no such affidavit in this application. He contended that from what has been deposed by the Applicant and the submission made by his advocate it is clear that the Applicant was negligent in making follow up on his appeal.

Fortifying his argument Mr. Ndunguru argued that in deciding this application the Court must be guided by the guidelines made by the Court of Appeal of Tanzania in the case of **Lyamuya Construction Company Limited vs. Board of the Registered Trustees of the Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010. He also insisted that the Applicant's averments that the Applicant will be punished or blamed for the wrong advice given by his former advocate has no legal stand since wrong

legal advice or ignorance of law are not sufficient reasons for the extension of time. To buttress his stance he referred this Court to the decision of the Court of Appeal and this Court in the case of **Rex vs. Brown Mbetwa**, 15 EA CA and **Betha Israel Behile vs. Zakaria Israel Kidava**, Misc Civil Application Number 12 of 2016. Finally, he prayed for this Court to dismiss this application with costs.

In his rejoinder submission, Mr. Makame stated that the procedures of obtaining a copy of judgment before the District Land and Housing Tribunal are different from the procedures of the court system since the date of certification of the judgment does not mean to be the date of being supplied with it. He added that the attached annexure VKI and VK2 which proved that the Applicant was represented by Mr. Gaudence Ndomba who requested to be supplied with the copies of judgment and decree.

On the guidelines stated in the cited case of **Lyamuya Construction Company Limited vs. Board of the Registered Trustees of the Young Women's Christian Association of Tanzania** (supra), he argued that it is true that case provides the said guidelines; but each case has to be decided according to its circumstance. Lastly, he averred that from the recent decision of the

Court of Appeal made in the case of **James Gidion Kusaga vs. The Registered Trustee of The North Eastern Diocese of the Evangelical Lutheran Church of Tanzania** (supra), it is clear that wrong legal advice is a sufficient reason for enlargement of time to file an appeal. He prayed for this Court to grant an order for extension of time to file his petition of appeal.

Principally, to grant or to refuse to grant an order for extension of time is entirely the discretion of the Court. However, such discretion has to be exercised judiciously. Usually in granting an order for enlargement of time Courts are guided by the principle that there must be a good cause shown by the Applicant as to why time has to be extended. See the decision of the Court of Appeal of Tanzania in the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002.

As much as I am concerned, having gone through the affidavit, the counter affidavit and the submissions made by the learned counsel from both parties in this application, I find the main issue which needs to be determined by this Court is whether the Applicant has advanced good cause to convince this Court to exercise its discretion power to extend time within which the Applicant can lodge an appeal out of time.

As a matter of fact, in this application the reasons adduced by the Applicant for his delay to file his appeal on time are mainly two. *The first* being failure of the Applicant's former advocate to obtain the copy of judgment and decree from the trial Tribunal on time. *The second* reason is that the trial Tribunal supplied the copy of decree too late.

In fact, on the first reason for the delay, the Applicant's learned advocate is trying to show this Court on how the Applicant's former advocates inaction led to the delay in filing an appeal on time. It is the Applicant's allegations that it was his advocate who made him to fail to get the copy of judgment and decree on time which made her to be out of the required time in pursuing an appeal. His claim is based on legal malpractice against his former advocate for failure to perform his obligations.

On the second reason that the trial Tribunal failed to supply the Applicant with the copy of judgment and decree on time, the Applicant's advocate has contended that the judgment was delivered on 24<sup>th</sup> March, 2023 and certified on 24<sup>th</sup> July, 2023, since the trial Tribunal Chairperson was on maternity leave. The first letter for the request of the copy of judgment and decree was received by the trial Tribunal on 25<sup>th</sup> March, 2023 and the second letter was received on 9<sup>th</sup> October, 2023, more



than a period of six months from the date of the first letter. Moreover, the Applicant filed this application on 5<sup>th</sup> December, 2023.

Since the copies of judgment and decree were certified on 24<sup>th</sup> July, 2023, I am satisfied that the delay for the first four months was caused by the trial Tribunal for the reason that the Chairperson was on maternity leave. According to section 41 (2) of the *Land Disputes Courts Act* (supra), the time limit for the aggrieved party to lodge his/her appeal is forty-five (45) days. Therefore, if the period of four months is excluded there is a period of more than three (03) months that the Applicant was late in filing his appeal.

The Applicant's learned advocate has contended that the Applicant's former advocate was negligent in making follow up on the copies of judgement and decree. On my part, I am of the view that, the Applicant was to work closely with his advocate in making follow ups for the copies of judgment and decree or the Applicant himself was to be serious in making follow ups for the copies of judgment and decree since such services does not need the assistance from an advocate.

This Court has thoroughly digested the submission made by both parties and what has been deponed in their affidavit and counter affidavit and find that, from 24<sup>th</sup> July, 2023, the copies of judgment and

decree were ready and the Applicant was to collect and proceed with preparing his appeal. In that case, he was late for more than three months and the Applicant was duty bound to account for each day of delay.

The Court of Appeal of Tanzania, the Apex Court in our land, in the case of **Lyamuya Construction Company Limited vs. Board of the Registered Trustees of the Young Women's Christian Association of Tanzania** (supra), stated the guidelines of which courts must take into consideration when dealing with application of this nature. Those guidelines includes: **One**, the Applicant must account for each day of delay; **Two**, the delay should not be inordinate; and **three**, the Applicant must not show negligence in prosecuting the action that he intends to take.

From what has been expounded above, the Applicant has failed to meet the requirements for this Court to exercise its discretion power to grant extension of time for the Applicant to file an appeal out of time. The Applicant has failed to account for each day of delay, his delay for more than three months is also inordinate and he has shown negligence in dealing with his appeal, specifically on the reason that he was waiting for his advocated to go at the trial Tribunal to collect a copy of decree something he could have done in himself.

Consequently, from the foregoing discussion, I find the Applicant has failed to advance good reason to enable this Court to exercise its discretionary power to grant extension of time for the Applicant to file an appeal out of time. Thus, the application is dismissed for lack of merit and the Applicant is ordered to pay the costs. It is so ordered.

**DATED and DELIVERED at SONGEA this 14<sup>th</sup> day of March, 2024.**



  
**U. E. MADEHA**

**JUDGE**

**14/03/2024**

**COURT:** Ruling is read over in the presence of the Applicant's advocate Mr. Makame Sengo and in the absence of the Respondent and his advocate. The Respondent to be notified. Right of appeal is explained.



  
**U. E. MADEHA**

**JUDGE**

**14/03/2024**