

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

MBEYA SUB REGISTRY

AT MBEYA

MISC. LAND APPLICATION NO 47 OF 2023

*(Originated from the Judgment of 25 January 2023 of A. Mapunda,
Chairperson, in Application No. 35 of 2022 of the District Land and
Housing Tribunal for Mbarali at Rujewa)*

SAMSON GATANJILE MDIMIRAJE..... APPLICANT

VERSUS

EDA PAULO NGOMBANI..... RESPONDENT

RULING

Date of last order: 15 February 2024

Date of Ruling: 21 March 2024

SINDA, J:

This is an application for an extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Mbarali at Rujewa (the **DLHT**). The application is brought under section 41 (2) of the Land Dispute Act, Cap 216, R.E 2019. The application is by way of chamber summons supported by affidavits sworn by Samson Gatanjile

Mdimiraje, the applicant herein, and Tamasina P. Ndala a court clerk of the DLHT.

The applicant is praying for the following orders: -

- a) That this court be pleased to grant an extension of time to appeal out of time; and
- b) Costs of this application to follow the event in the main appeal.

The respondent, Eda Paulo Ngombani, filed a counter affidavit opposing the application. Since then, the respondent has not appeared in court.

The applicant was unrepresented and stated that he had nothing to submit. He prayed that the court consider what is contained in his application, the affidavit, and the respondent's counter affidavit.

In his application, the applicant submitted that the judgment of the DLHT was delivered on 25 January 2023, and immediately, the applicant applied to be supplied with copies of the judgment, decree and proceeding for appeal purposes. He received a copy of the judgment and decree within two weeks, but the proceedings were not ready until 20 June 2023 after being called by the clerk of DLHT to receive it. At that time, he was already out of time. He further submitted that the

delay was caused by DLHT, which supplied a copy of the proceedings to him late.

His argument was also supported by the affidavit of Tamasina P. Ndala, a court clerk at the DLHT. He stated that the copy of the proceedings contained many pages, and it took a long time to type it. He further stated that it was certified on 17 April 2023 and given to the applicant on 20 June 2023.

In her counter affidavit, the respondent resisted the application. She submitted that the judgment and decree were ready for collection on 17 February 2023, as certified by the DLHT. Regarding the copy of the proceeding, she argued that it was not a necessary document in processing the appeal from DLHT to the High Court. She prayed the application be dismissed with costs.

After considering the court records, the applicant's affidavit, and a counter affidavit from the respondent, the crucial issue to be determined by this Court is whether the applicant has demonstrated sufficient or good cause to warrant an extension of time.

In his affidavits, the applicant advanced one major reason for the delay that he was not supplied with copies of proceedings on time. I have gone through copies of the judgment, decree and proceedings and find

that the judgment, decree and proceedings were certified on 17 February 2023.

This shows that when the judgment and decree were supplied to the applicant, the proceedings were also ready for collection. This is contrary to the clerk of DLHT's statement that when the judgment and decree were supplied to the applicant, the proceedings were not ready and were certified on 17 April 2023 and given to the applicant on 20 June 2023.

It is a settled law that a court cannot rely upon an affidavit containing false information to decide a matter. The court of appeal pronounced itself in **Damas Assey and Another vs Raymond Mgonda Paula and 8 Others**, in Civil Application No. 32/17 of 2018, and **Kidodi Sugar Estate and 5 Others vs Tanga Petroleum Co. Ltd**, Civil Application No. 110 of 2009, where it was cited with approval its decision in **Ignazio Messina vs Willow Investments SPRL**, Civil Application No. 21 of 2001 that;

"An affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon to support application. False evidence cannot be acted upon to resolve any issue."

In line with the above case, I disregard the affidavit of Tamasina P. Ndala, a court clerk of the DLHT, which supports the applicant's application because it contains false information.

Further, the Court of Appeal of Tanzania (the **CAT**) in **Oliva Damas Vegulla & Another vs Mohamed Bashiri Telangwa, Civil Appeal No. 159 of 2019** (CAT at Dar es Salaam, Tanzania), the CAT stated that the provisions of Order XXXIX Rule 1 (1) provide that:

*"Every appeal shall be preferred in the form of a memorandum of 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 on this behalf and the memorandum shall be accompanied by **a copy of the decree appealed from and (unless the Court dispenses therewith) of the judgement on which it is founded.**"*
(Emphasis added).

The CAT stated that it is apparent that the above provision does not specifically mention the word proceedings. As such, I agree with the respondent that the proceedings was not a necessary document in processing the appeal from DLHT to the High Court.

Further, in the **Director of Public Prosecutions v. Mawazo Saliboko @Shagi & 15 Others**, Criminal Appeal No. 384 of 2017 (CAT at Tabora,

unreported) amplifies section 19 (2) of the Law of Limitation Act Cap. 89 R.E 2029 by ruling that the time one waits for the issuance of copies of judgment or proceedings has already been excluded under the law.

In this case, the judgment and proceedings were certified on 17 February 2023. It is my opinion that when the applicant collected the judgment, the proceedings were also ready for collection. He had the obligation to collect the proceedings. Counting from 17 February 2023, when proceedings were ready for collection, 45 days of appeal expired on 3 April 2023. It is a settled law that delays, even for a single day, have to be accounted for. This was stated in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) it was held that:

" Delay of even a single delay, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

In this case, the applicant filed the application after expiration of almost four (4) months, his argument that when he got the judgment and decree, the proceedings were not ready contradicted the court's records, which show that proceedings were certified on the same date with judgment also the argument that he was notified to collect copy of

proceedings by Clerk of DLHT on 20 June 2023 was not supported by any evidence. I find that the delay for each and every single day to file the reason for the applicant failed to account for the reason for the delay for each and every single day in filing his appeal for a period of almost four (4) months.

For the above reasons, I find his application devoid of merit and dismiss it with costs.

It is accordingly ordered.

DATED at **MBEYA** this 21st day of March 2024.



A. A. SINDA
JUDGE

The Ruling is delivered on this 21 March 2024 in the presence of the applicant and in the absence of the respondent.



A. A. SINDA
JUDGE