

**IN THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISCELLANEOUS LAND APPLICATION NO. 35 OF 2012**

**ALIM KAFUNGA MWANGOTI .....APPLICANT**

**VERSUS**

**MUFINDI DISTRICT COUNCIL .....RESPONDENT**

**RULING**

**B.R. MUTUNGI, J.**

This is a ruling in respect of an application for extension of time to file a notice of appeal as well as to apply for copies of proceedings related to Land Case No. 167 of 2007 for purpose of comprising an appeal which is intended to be pursued by the said applicant. It is supported by an affidavit deposed by one Mathew Simon Kakamba counsel for applicant herein. The application has been brought under the provision of Section 14 of the Law of Limitation Act Cap 89 RE: 2002, in conjunction with Section 93 and 95 of the Civil Procedure Code Cap 33 RE: 2002 and any other enabling provision of the law.

This case originates from the decision of this court in Land Case No. 67 of 2007 which was before my learned brother G.K. Rwakibarila, J. In this case the judgment and decree partly was entered in favour of the applicant one Alim Kafunga Mwangoti who was the plaintiff. It is this judgment that has aggrieved the applicant from a case which had proceeded Exparte-Judgment.

The applicant's counsel has prayed to adopt the affidavit filed along with the application and because of the reasons in the affidavit he humbly submitted that he could not file a notice of appeal within the prescribed time because he did not have the knowledge of the Exparte-Judgment. Despite a diligent follow-up with the registry and writing to the registrar he still did not come to know of the Judgment. By the time it came to his knowledge which time the ordinary time to file the notice of appeal had already elapsed.

The applicant thus submitted that it was not lack of diligence or inaction on the his part that he did not know of the Exparte-Judgment but it was for reasons which were

beyond his control. He prayed to the court to grant the application sought as prayed.

I have carefully gone through the learned counsel's submission and the Affidavit filed by the learned counsel in support of the application, I find that the counsel is relying on the fact that on the date set for judgment he was bed ridden as he was suffering from blood pressure and alledges to have annexed his hospital attendant sheet "KKI". I have carefully and thoroughly perused through the whole court record I find that this piece of document was never attached. In the event it becomes very difficult for me to ascertain whether the learned counsel was indeed bed ridden or suffered the said illness.

The learned counsel has further relied on his letter annexed as "KK2" addressed to the registrar inquiring as to when the judgment was to be delivered. I have noted the letter was dated 19/1/2012 which was a month from the time from the Judgment had been pronounced.

The letter itself does not show whom the learned counsel had contacted and on what date so as to tally with his excuse that he had been suffering from high blood pressure. In the said letter the learned counsel acknowledges that he knew the judgment was to be delivered on 19/12/2011 but makes no mention of his sickness only that he had been told the same had not been delivered. The learned counsel was to provide the court with "good" and sufficient reasons as for why he should be granted the extension of time.

For any stretch of imagination I do not find the good and sufficient reasons to move the court to grant him the extension. The record is very clear that the Judgment was delivered on 19/12/2011 and from the learned counsel's letter to the registrar, this date was well in his knowledge. But for some unknown reason he was not present in court. It is obvious the learned counsel was negligent in following up the Judgment.

In conclusion I proceed to dismiss the application as the applicant has not shown "good" and "sufficient" reason

to move the court to grant the prayer for extention of time to file his notice. I make no order as to costs.

B.R. MUTUNGI

**JUDGE**

**17/7/2012**

Read this day in presence of Mr. Kakamba legal counsel for applicant.

B.R. MUTUNGI

**JUDGE**

**17/7/2012**