

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

MISC. LAND CASE APPLICATION NO. 14 OF 2010

SAMARIA VILLAGE COUNCIL APPLICANT

VERSUS

1. PATRICK MWALONGO

2. ANAFILISI MLIGO

3. PENDO

4. MAINRAD NZIKU

5. NGANDA VILLAGE COUNCIL

6. NJOMBE DISTRICT COUNCIL

} RESPONDENTS

15/5/2014 - 23/05/2014

R U L I N G

MADAM SHANGALI, J.

The applicant SAMARIA VILLAGE COUNCIL duly represented by Mr. Mushokorwa, learned counsel has filed this application seeking for enlargement of time to enable him to lodge his appeal to this court out of time. The applicant is intending to challenge the decision of Njombe District Land and Housing Tribunal in Land Application No. 28 of 2008.

The application has been filed under Section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2002. The application has been supported by an affidavit deposed by Mr. Mushokorwa which contains the following important grounds: **Firstly**, that the copy of the judgement of the tribunal and its decree requested were not supplied until on 13/06/2010 and 17/06/2010. **Secondly**, that by the time the tribunals documents were obtained, the prescribed period for lodging appeal had expired and he could not then immediately lodge the application for extension of time as he was in Sumbawanga attending the High Court session up to the end of July, 2010 when he traveled to Dodoma to attend the AGM of the Tanganyika Law Society and thereafter he was committed in the Court of Appeal Session at Iringa. **Thirdly**, that the delay to institute the appeal and application for extension of time was attributed to the waiting for copies of judgement and decree to attach to the intended appeal and his absence from his station at Mbeya.

On the part of the respondents, the first to fifth respondents were represented by Mr. Mwelelwa, learned advocate while the sixth respondent was represented by Mr. Dunstan Shimbo, learned advocate cum solicitor. The application was seriously resisted by two counter affidavits deposed by the first respondent Patrick Mwalongo and Mr. Dunstan Shimbo, learned advocate.

On the request from the parties this application was argued by way of written submission.

In his written submission and in support of his affidavit, Mr. Mushokorwa strongly submitted that the first ground for delay was the time consumed by the District Land and Housing Tribunal to supply the applicant with a copy of the decision and decree which were orally applied for on the date of the decision i.e. 2/3//2010 and again in writing on 6/4/2010 as evidenced by letter Annexature "A" to the affidavit. That the request served as notice to appeal and the requested documents were required to assist the applicant/appellant to formulate a proper petition of appeal as required by the law. He also contended that the Law of limitation Act and several case law dictates on how to exclude all that time spent in securing the said papers. He cited the case of **Mary Kimaro Vs. Khalfan** (1995) TLR 202 and **Salum Vs. Khalfan** (1967) HCD no. 15.

He further submitted that while Mr. Patrick Mwalongo concedes in his affidavit about that notice of appeal, it is surprising how Mr. Dunstan Shimbo argues that there was no such notice in the presence of abundant evidence. He also contended that it is equally devoid of merit the argument that the applicant did not take necessary steps to obtain the documents after they were certified on 10/05/2010. Mr.

Mushokorwa argued that the answer to that contention is that following the oral and written request for the said documents to the tribunal, it was the duty of the registry to notify the applicant when the documents were ready for collection but that was not done. He strongly submitted to the effect that it is not the duty of the applicant to keep pestering the registry once he had already made a request. He cited the case of **Transcontinental Forwarders Vs. Tanganyika Motors** (1997) TLR 328.

The learned advocate submitted that having waited for some time, the applicant made efforts to enquire on 13/05/2010 and 17/06/2010 when a copy of decision and decree were respectively supplied to him. He argued that it is at that very period when time started to run against the applicant.

Mr. Mushokorwa submitted further that the second reason for not lodging the appeal within time is the fact that under the Land Disputes Courts Act, Cap. 216 particularly Section 41, no time limit is prescribed. Therefore with that lacuna one is bound to resort to the CPC and the Law of Limitation Act. He submitted that under item 1 of Part II of the 1st Schedule to the Law of Limitation Act, the time set is 90 days since there is no other time prescribed by any other written law. Mr. Mushokorwa submitted that if his approach

is correct, it now dawns on him that in filing this application on 21/08/2010 they were still within time counting from 17/06/2010 when the decree was supplied.

In addition Mr. Mushokorwa submitted that when the documents were supplied to his client on 17/06/2010 he was away at Sumbawanga up to 28/7/2010 attending the High Court sessions and that when he returned to Mbeya by first week of August, he was busy making necessary preparation for the Court of Appeal Session that was due to commence at Iringa on 16/8/2010 to 6/9/2010. That before he was engaged in the Court of Appeal sessions he had to travel to Dodoma to attend the AGM meeting on 13 – 14/08/2010, the mission entailed 5 days including days of travel and not 2 days as argued by Mr. Shimbo. That, when he filed this application on 26/08/2010 he was still engaged in the Court of Appeal sessions and only sneaked out for a day or two to file the application.

Lastly the learned advocate submitted that for the above reason the court should find out that he acted prudently with no tail of indolence and hold that there was good reason for delay namely he was preoccupied by public duties and grant the application with costs.

In response Mr. Shimbo, learned advocate for the sixth

respondent submitted to the effect that, Mr. Mushokorwa concedes that by the time when the court documents were obtained the prescribed time for lodging an appeal had expired. That instead of filing the application immediately, Mr. Mushokorwa continued with other activities and business. Mr. Shimbo argued that Mr. Mushokorwa could have drafted the required documents and handle them to the applicant (*his client*) for filing in court. Instead, he delayed the whole process waiting until he obtained time to draft and file the application himself. Mr. Shimbo cited the case of **Alhaji Abdallahtalib Vs. Eshakwe Ndoto Mushi** (1990) TLR_108 and insisted that the delay to file an appeal has been caused by both the advocate and his client/applicant and such negligency and inaction cannot be a sufficient reason to warrant grant of extension of time.

Mr. Shimbo further submitted that even after making oral and written request of documents to the court it was the applicant's duty to follow up the matter in court to show that he had interest to pursue his appeal. He cited the case of **Dar-es-Salaam City Council Vs. Jayantilal P. Rajan** (CAT) Civil Application No. 27 of 1987 (unreported) where it was observed that *applying for copies of judgement and proceedings within a short time from the date of judgement and later make a follow-up by way of a reminder and finally lodging an application after being supplied with the same depicts diligence*

on the part of respondent. Mr. Shimbo submitted that no follow-up was made by the applicant or his counsel to ensure that documents are ready in time for the purpose of appealing.

Mr. Mwelelwa, learned advocate for the 1st to 5th respondents submitted almost in the same line as the advocate for the sixth respondent. He insisted that the applicant and his counsel acted negligently in not making follow-up of the documents which they applied for and now they are shifting the blame to the District tribunal for delaying to issue the documents and failing to alert them for collection. He contended that the allegations are not correct because the District tribunal prepared and certified the documents very much before the time to appeal lapsed.

Mr. Mwelelwa submitted that most of the case authorities cited by the advocate for the applicant are irrelevant to the present matter. He stressed that there is no law in this country which imposes the duty to the court or tribunal registry to remind a party to collect copies of judgement or decree. He also contended that attending a High Court session or Court of Appeal or AGM meetings does not prevent the advocate from filing an appeal or application rather it prevent him from appearing and defending a case before the court. Mr. Mwelelwa stated that the reason submitted by the applicant's advocate are not sufficient reasons to grant

extension of time because as an advocate he is supposed to perform those duties within time without hunting for lay excuses.

After considering the arguments from both sides it is obvious that the main reason for failing to lodge an appeal in appropriate time is because the applicant was not notified by the District Land and Housing Tribunal that copies of judgement and record of proceedings were ready for collection; and that even after collecting the same on 13/5/2010 and 17/6/2010 the advocate was busy pursuing other public duties viz; preparation and attending the Court of Appeal sessions; attending High Court sessions and attending AGM meetings at Dodoma. As a result even this application for extension of time was filed late on 21/8/2010.

Let me say it straight forward here that there is nothing in this application capable to constitute sufficient cause for not filing the intended appeal in time. The reasons advanced by the applicant's advocate might have been proper if the application was for seeking for restoration of a case which had been dismissed for non-appearance as submitted by counsel for the respondents. In other words Mr. Mushokorwa's reasons presuppose that he is the only person in his chambers capable to file documents in court. The learned advocate could have drafted his relevant documents and either lodge the appeal

himself or sent his client (applicant) to file them or sent his legal officer or his clerk to do the same before expiration of time. Moreover, the respondents advocates are correct that having applied for copies of judgement and proceedings it was mandatory for the applicant's advocate and even his client to follow-up to the District Tribunal instead of waiting for the tribunal to notify him.

The decision in the case of Dar-es-Salaam City Council (supra) is very relevant in this application. In the present case I would put it this way; that, the act of the applicant of applying for copies of judgement and record of proceedings within a short time from the date of judgement and thereafter to stay put and aloof without any follow-up, waiting for the court or tribunal registry to awaken and remind him amid out of time that the documents are ready for collection depicts outright negligency, lack of diligent and seriousness.

In the case of **Chesco Muhyinga Vs. Sietco**, Misc. Civil Application No. 50 of 2005, HCT – Dodoma (*unreported*) the court among other things stated that:-

*“The applicant tells the court that he did not appeal in time because he had to attend to a sick wife. That, also, unfortunately may not constitute sufficient cause. **He could have sent someone to file his***

papers” (emphasis mine).

As aforesaid, Mr. Mushokorwa after having realized that he was occupied with so called other “*Public duties*” he could as well have sent someone else to file the appeal.

There is another dimension in this matter I have noted that according to the record of proceedings, having orally applied for copies of judgement and proceedings on the date of judgement and having put their request in writing, the applicant and his advocate called it a day. The record indicate that they concentrated in pursuing their application for stay of execution without any existing pending appeal. On 23rd September, 2010 the application for stay was thrown out because there was no supporting appeal filed. Now they are blaming the tribunal for not notifying them about the presence of the copies of judgement and proceedings.

All in all, this application is hereby dismissed for lack of sufficient reasons. The respondents are entitled to their costs.

M. S. SHANGALI

JUDGE

23.5.2014

Ruling delivered today 23/5/2014 in the presence of Mr. Mwelelwa learned advocate holding brief for Mr. Mushokorwa for the applicant and Mr. Shimbo for the 6th respondent. Mr. Mwelelwa for 1st to 5th respondents.

M. S. SHANGALI

JUDGE

23.5.2014