IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND APPLICATION

NO. 4 OF 2013

HUSSEIN CHOTA ..... APPLICANT

VERSUS

1. MUFINDI DISTRICT COUNCIL
2. PASCAL MBWILO

..... RESPONDENTS

25/7/2014 & 29/8/2014

RULING

MADAM SHANGALI, J.

The applicant has moved this court under Section 14 (1) of the Law of Limitation Act, Cap. 89 of the Laws and Section 95 of the Civil Procedure Code, Cap.33 seeking for extension of time to file his appeal to this court.

In the affidavit deponed by Mr. Malangalila learned counsel in support of the application, he stated the following reasons which prevented him to appeal in time. **One**, that the

Land Tribunal Registry delayed to supply copies of the decision which are necessary to the appeal; **Two**, that soon after the delivery of the ruling on 24/05/2012 the applicant gave his intention to appeal and applied for copies of the ruling, proceedings and order thereto for needful; **Three**, that the ruling and proceedings were received on 2/7/2012 while the order was received on 11/12/2012.

The first respondent was represented by Ellah Msigwa, the Solicitor while the second respondent was represented by Grace Mhagama, learned counsel. Following the request from the parties, the application was argued by way of written submission.

There is no dispute that the ruling of the trial District Land Tribunal was delivered on 24/05/2012 and according to the law the applicant was supposed to file his appeal within a period of 45 days from 24/5/2012 but instead he has filed this very application for extension of time after the expiry of 235 days from the date when the ruling was delivered. In his written submission Mr. Malangalila has submitted that the notice and prayers for copies of the ruling, proceedings and order was given on 25/5/2012, the very next day after the delivery of the ruling. However, the copies of the proceedings and ruling were received on the 2/7/2012 that is to say two months after the notice and prayers for copies was filed. He

stated that the order of the Tribunal was issued to the Applicant on 11/12/2012, that is after 200 days. Therefore basing on the requirements of law and specifically Order XXXIX, Rule 1 which provide that a memorandum of appeal from original decree must be accompanied by the order that being appealed from, the applicant was obliged to wait for the copy of the order in order to file a complete memorandum of appeal. He referred to the decision in the case of **Yusuf Mtambo and another Vs. Moez Alidina** (1985) TLR 145 where the term "*Order*" was defined as a separate entity which has to be abstracted from the ruling, supplied and exhibited.

Mr. Malangalila went further and contended that the law of Limitation Act, under Section 19 (2) provides for exclusion of time requisite to obtain copy of order. In support of his submission he called in aid the decision in the case of **Mary Kimaro Vs. Khalfani Mohamed** (1995) TLR 202.

Finally Mr. Malangalila argued that the main reason for the delay was the act of waiting to receive copies of the proceedings, ruling and the order and therefore he prayed the court to allow the application with costs.

On the other side, the learned Solicitor for the first respondent started to challenge the application contending that the ruling intended to be appealed against emanates from

a preliminary objection based on point of law. He stressed that such decisions on preliminary point of law or an interlocutory application which have no effect of finally deciding the case is not appellable. He cited Regulation 22 of the Land District Court (*The Land and Housing Tribunal*) Regulations 2002.

In response to the applicant's submission, the learned Solicitor contended that it is obvious that since 02/07/2012 the applicant had on his hand a certified copy of the ruling and proceedings, just 40 days after the delivery of the ruling. That in that time he was able to make a sound memorandum of appeal as stated in the case of **Mary Kimaro** (*supra*). He submitted that according to his understanding a drawn order has to be abstracted from the ruling which was already available. He wondered as to why the applicant keep on waiting for the drawn order without any follow-up for so many days. He argued that the only answer is that there was negligence on the part of the applicant not to collect the ruling and order from the court. He stressed that the applicant was supposed to take extra initiatives for the follow-up of a drawn order before the expiry of time to appeal rather than being quite for about five months. He cited the case of **Maneno Mengi Limited & 3 others Vs. Farida Said Nyamachumbe & The Registrar of Companies** (2004) TLR 391. He prayed this court to dismiss the application with costs.

On the side of the second respondent, Ms. Grace Mhagama, learned advocate joined the position advanced by the first respondent relating to the non-appellable of the ruling and the provisions of Regulation 22 of the Land Disputes Courts (*The District Land and Housing Tribunal*) Regulations, 2002.

Ms. Grace Mhagama submitted that the applicant have totally failed to advance strong and sufficient reason to support his application. She argued that the ruling was delivered on 25/5/2012 and certified on 2/.7/2012. That from July, 2012 to January, 2013 when he filed this application for leave is a period of about six months after the ruling was out. She stressed that the applicant had ample time to appeal within time if he was really serious to appeal and not to be late for such extent. He contended that even the drawn order itself has weakness as it does not show the date when it was certified/supplied to the applicant. She contended that the argument that the applicant was waiting for drawn order from the District Tribunal to make his appeal is too baseless as both documents were certified on the same date. That the ruling and order were ready for collection hence the argument that the applicant was waiting for drawn order to make his application cannot hold water as it was his own delay to collect the same since July, 2012, stressed, Ms. Mhagama. She prayed the application to be dismissed with costs.

In rejoinder and regarding to the provision of Regulation 22 of the Land Disputes Court Regulations (*supra*), Mr. Malangalila contended that the respondents have failed to interpret correctly the meaning of the words "*finally decided the case*". He emphasized that with the regard to the instant case the decision of the District Tribunal has already determined the case because it dismissed it against the applicant hence the need to appeal against it. He insisted that the only remedy available to the applicant is to appeal otherwise the applicant shall be denied the right to address his grievances to the law machinery.

At this juncture and before determining the merits of the application, I must state here that the respondents counsel have misconceived the interpretation of Regulation 22 of the Land Dispute Courts (*The Land and Housing Tribunal*) Regulation 2002. It is true that the Application No. 13 of 2011 was dismissed on the preliminary objection on the point of law. However, the decision thereof has finally and conclusively determined the rights and interests of the applicant by dismissing the whole claim with costs. From that juncture the only remedy available to the applicant is to appeal against that decision. In my considered opinion the said point of law is premature because the matter before this court is related to application for extension of time to file the appeal. Therefore such an objection may be properly raised during the hearing of

the appeal itself. Nonetheless, the question is whether having so dismissed under part I of the schedule to the Law of Limitation Act, which presuppose the issue of lack of jurisdiction, there would be any chances of success on appeal.

Reverting to the application itself, let me repeat the cardinal principle of the law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause – See **Mumello Vs. Bank of Tanzania** (2006) 1 EA 227.

Having seriously perused the record of the proceedings of the trial District Tribunal, affidavits and written submissions of both parties, I detected inter-alia that the ruling was delivered on 24/5/2012 but no letter which was lodged in the trial District Tribunal by the applicant to request for copies of documents necessary to prepare an appeal as alleged by the applicant's counsel. It is curious that the applicant's counsel has been seriously making reference to the letter of application for copies of ruling, proceedings and drawn order but the whole record of proceedings of the trial District Tribunal is missing such an important document.

In his own affidavit attached to the chamber summons

the leaned counsel for the applicant claimed to have annexed several documents including the alleged "*application letter*" as "*ANN-HCA*" but for sure nothing like that was annexed. This state of affairs was raised by the counsel for the second respondent who stated that the applicant has failed to annex necessary documents to the application served to her like drawn order and memorandum of appeal as stated in his affidavit and that shows that he is not serious at all. It is interesting that in his extensive rejoinder, the learned counsel for the applicant failed, refused or neglected to respond on that serious complaint.

Be it as it may, it is settled that an aggrieved party, soon on delivery of the judgement or ruling which is a subject of the intended appeal or application must take some crucial steps for appealing against the said judgement or ruling. The steps must include lodging a letter to the particular court or tribunal registry requesting for copies of judgement/ruling, proceedings, decree or order. Such a letter should be seen in the record of the trial court or tribunal proceedings and the applicant must attach a copy of it to the affidavit in support of the application. The importance of availability of such letter is obvious because it is the nexus of the application for extension of time. In the absence of such an important letter of application, the whole submission by the applicant's counsel remains obsolete.

In conclusion, and as I have pointed out above the record of the proceedings of the trial District Tribunal do not show a letter lodged by the applicant requesting for copies of ruling, proceedings and drawn order. The affidavit in support of the chamber summons is not annexed with the copy of the said letter to substantiate the allegations. The omission suggests that the applicant ab initio had no intention to appeal against the decision of the trial District Land and Housing Tribunal.

In the premises, the application for extension of time is hereby refused. The respondents are entitled to their costs.

M. S. SHANGALI

JUDGE

29/8/2014

Ruling delivered in the presence of both counsel of the applicant and respondents.

M. S. SHANGALI

JUDGE

29/8/2014