IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

MISC. LAND CASE APPLICATION NO. 31 OF 2012

(Originating from Application No. 62 of the District Land and Housing Tribunal for Iringa at Iringa)

LUKANI VILLAGE COUNCIL ..... APPLICANT

VERSUS

DORIS CHAVALA ..... RESPONDENT

29/5/2015 & 12/6/2015

RULING

MADAM SHANGALI, J.

The applicant, Lukani Village Council has filed this application seeking for leave to file an appeal out of time against the decision of the District Land and Housing Tribunal for Iringa, (*the trial Tribunal*) in the Application No. 62 of 2011. This application is supported by an affidavit sworn by one Victor Mheluka, the Village Chairperson of the applicant and has been made under Section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2002.

Before the trial Tribunal the respondent, Doris Chavala a daughter and the administratrix of the estate of the late Elia Chavala successfully sued the applicant for trespass and unlawful apportioning the suit land to some villagers. The decision of the trial Tribunal in favour of the respondent was delivered on 6th June, 2012 and certified by the trial Tribunal on 5th October, 2012. The applicant was required to file his appeal within a period of sixty days from the date of the decision of the trial Tribunal. The applicant was late hence this application based, mainly on the following paragraphs as deponed in the applicant's supporting affidavit.

> "3. That, the applicant was dissatisfied with the decision hence he wrote a letter requesting a copy of judgement (*sic*) and case proceedings which were delivered to the applicant very late.
>
> 4. That, the District Land and Housing Tribunal delayed to type, proofread and certify the copy of judgement until on 05th October, 2012.
>
> 5. That, the applicant made all efforts of making follow-up to get a certified copy but in vein until on 15th October, 2012 when it was given to the applicant."

Before this court the applicant was represented by Mr. Lawiso, learned counsel while the respondent appeared in person and unrepresented. On 3rd February, 2015 when the pleadings were ready the parties asked for the leave of the court to argue the application by way of written submissions. Leave was duly granted and the parties have complied with the schedule order for filing their written submissions.

In his written submission the applicant evaluated the contents of his affidavit to the effect that the applicant was delayed to lodge the appeal on time but that delay was actually caused by the trial Tribunal which failed to provide him with a copy of judgement and record of proceedings in time in order to prepare and file his appeal. He submitted to the effect that immediately after the decision of the trial Tribunal he wrote a letter to the trial Tribunal requesting for copies of the judgement and proceedings but the same were delivered to him very late on 15th October, 2012, having been certified by the Chairman on 5th October, 2012.

The respondent responded equally briefly to the effect that there is no evidence to prove the applicant's submission that he wrote a letter to the trial tribunal requesting for the said copies. He contended that the applicant is attempting to mislead the court by relying on Section 14 (1) of Cap. 89 without providing any proof of the existence of a letter requesting for the copies of

judgement and proceedings. She insisted that the applicant failed to annex a copy of the letter in his affidavit and or produce it during the hearing. He prayed the application to be dismissed with costs.

The duty of this court in deciding such application is to look and decide on its merits. Section 14 (1) of the Law of Limitation Act, Cap. 89, R.E. 2002 provides:-

> *"Notwithstanding the provision of this Act,* ***the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal*** *or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application" (Emphasis mine).*

In essence it is trite law that an application for extension of time, just like this one, 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. It has been held in number of occasions that no particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances

of each application. Each case, thus, should be looked at in its own facts, merits and circumstances before arriving at the decision on whether or not sufficient reasons has been shown for extension of time. See the case of **Selina Chibago Vs. Finihas Chibago, Civil Application No. 182 "A" of 2007, CA, Dar-es-Salaam** (*unreported*).

This court is well aware of the decision in the case of **Felix Tumbo Kisima Vs. TTCL Limited and Another (1997) TLR 57 (CAT)** in which it was held that the term "*sufficient cause*" should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step.

Again, Section 19 of the Law of Limitation Act (*supra*) provides for the exclusion of certain periods, such as the time requisite for obtaining copies of the judgement, decree or order appealed from. It also provides that where the court to which an application for leave to appeal is made, is satisfied that it was necessary for the applicant to obtain a copy of proceedings of the relevant suit or proceedings before lodging or making the appeal, the court may allow to be excluded from the period of limitation prescribed for such appeal, the period of time requisite for obtaining a copy of the proceedings.

I travelled that far because the applicant in this application tried to blame the trial Tribunal that it was responsible for the delay. In a way the applicant's reason seems like something which was outside his power and thus that time should be excluded when computing the time.

However, it is a settled principle of law that he who alleges must prove. The applicant's counsel is quite aware of that position of the law. Secondly, it is also position of the law that those who come to court of law must not show unnecessary delay in doing so; they must show due diligence. See the case of **Dr. Ally Shabhay Vs. Tanga Bohora Jamaat (1997) TLR 305**. In a much strict way, one should not be allowed to come to court when he wishes to do so where there is time frame provided by the law within which the applicant ought to comply with. If the applicant had an intention to challenge the trial Tribunal's decision, that intention could have been clearly observed through his immediate and subsequent actions after the decision. There is no evidence to prove that the applicant took any necessary and reasonable step to facilitate his intended appeal immediately after the trial Tribunal's decision. The act of the applicant to stay put and wait until the said copies were certified by the trial Tribunal indicate lack of interest to appeal or outright indiligence on his part. May be the applicant and his counsel were not aware of the existence of the prescribed limitation period of filing an appeal,

but even though, the law is clear that ignorance of law is no defence.

The application for leave is hereby rejected and dismissed with costs for want of merit.

M. S. SHANGALI

JUDGE

12/6/2015

Ruling delivered in the presence of Mr. Lawiso, learned advocate for the applicant and the respondent in person.

M. S. SHANGALI

JUDGE

12/6/2015