

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPL. NO. 672 OF 2017

SILAS KATEMI.....APPLICANT

VERSUS

PAUL ROBERTSON MBWANA.....1ST RESPONDENT

CAMILLIUS MAHINDI.....2ND RESPONDENT

R U L I N G

Date of last order: 16/05/2018

Date of Ruling: 03/08/2018

MGONYA, J

This ruling is in respect of the application for extension of time to file an Appeal out of time. The Applicant **SILAS KATEMI** made this Application under **Section 41(2) of the Written Laws (Miscellaneous Amendments) No. 2 Act 2016 of the Land Disputes Courts Act, Cap. 216 [R. E. 2002]** for the following orders:-

- 1. That this Honorable Court be pleased to issue an order for extension of time within which the Applicant may file an*

*Appeal against the whole Judgment and Decree delivered in the DLHT for Kibaha at Kibaha, for **Land Application No. 23 of 2014**, by Hon. S. R Mbuga, Chairman, dated 13th October, 2016.*

2. Costs to follow the events.

3. Any other orders that this Hon. Court may deem fit just to grant.

The application is supported by the Affidavit sworn by **SILAS KATEMI** the Applicant.

The Applicant is enjoying the service of the learned counsel Mr. Victor Kikwasi, and the 1st Respondent is represented by Mr. Ibrahim Mbiu Bendera while the 2nd Respondent appeared in person unrepresented.

With the leave of the court, the Application was disposed of by way of written submissions.

Upon reading the submissions of the Applicant, respective Affidavit and Counter Affidavit and having considered the relevant laws, I have observed that the main issue for consideration is whether the Applicant has shown sufficient cause for this court to exercise its discretionary power to extend the time within which to file an Appeal against the whole Judgment and Decree delivered in

the District Land and Housing Tribunal for Kibaha at Kibaha, in **Land Application No. 23 of 2014**, by Hon. S. R Mbuga, Chairman, dated 13th October, 2016.

Undoubtfully, it is in the discretion of the Court to grant extension of time. But that discretion has to be exercised judiciously; further in order for the Court to exercise its discretionary powers and grant an extension of time within which to take necessary steps out of time, the Court must be satisfied that the Applicant has advanced sufficient reasons to account for the delay to take the necessary steps.

It is a trite law that, in this kind of an Application, the Applicant must account for all the period of delay and observe the following; that:

- (a) The delay should not be inordinate;***
- (b) The Applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.***
- (c) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.***

The above principles were dully held in the case of ***LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA CIVIL APPLICATION NO. 2 OF 2010*** (Unreported).

The reasons for delay in this Application to take the necessary steps for Appeal have been explained in paragraphs 4-13 of the Applicant's Affidavit, especially on paragraph 12 of the Affidavit which states that:

"the delay in filing the intended Appeal within time was caused by the delay in supplying with the copies of Judgment and Decree to be appealed against."

In my opinion I find justifiable reason advanced by the applicant to constitute good cause to warrant this Court to exercise its discretion to extend the time within which to file an Appeal.

The Applicant showed due diligence in making follow up of his case by writing letters requesting to be supplied with the copies of the Judgment, Decree and Proceedings, as seen in annexure **SK-2 and SK- 3** respectively.

It is trite law that where there is a delay on the part of the Applicant, he ought to table tangible explanation or material to enable the Court to exercise its discretion to grant the prayer sought.

In the case of ***JOHN ONDOLO CHACHA VS. DAR COOL MAKERS Ltd Civil Application No. 99 of 2014*** (Unreported) the Court of Appeal of Tanzania held that:

"....the undisputed facts are that the applicant obtained the necessary documents on 30th April, 2014, documents that could enable him to proceed further with other necessary steps I consider that to be a good cause for the said delay.

Again in the case of ***TANZANIA REVENUE AUTHORITY VS YUSUPH JUMA YUSUPH CIVIL APPLICATION NO. 02 OF 2014*** (Unreported), the Court of Appeal considered the delay of obtaining the copy of the decree as sufficient reason for granting an Application for extension of time.

It is from the above authorities and reasons advanced on the Applicant's affidavit, I find that there are sufficient grounds for this court to grant the Application sought.

I accordingly grant the Application for extension of time to file an appeal out of time as prayed.

I make no order as to costs.

The Applicant's to file the appeal within **fourteen (14) days** from the date of this ruling.

It is so ordered.



L. E. MGONYA

JUDGE

03/08/2018

COURT: Ruling delivered in the presence of Mr. Mwaifyani for Applicant, Advocate Akize for 1st Respondent and Ms. Emmy RMA on 3/8/2018 in chamber No. 17.



L. E. MGONYA

JUDGE

03/08/2018