

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

MISCELLANEOUS LAND CASE APPLICATION NO. 226 OF 2019

**(Arising from the Original Land Application No 35 of 2017
by District Land and Housing Tribunal for Kibaha, dated
31st October, before Hon. S.L. Mbuga)**

LUKA KAZIYABURE.....APPLICANT

VERSUS

RAHA BAKARI.....1ST RESPONDENT

FATUMA BAKARI.....2ND RESPONDENT

Date of Last Order: 5.9.2019

Date of Ruling: 23.9.2019

RULING

M. P. OPIYO J:

Lucas Kaziwabure, the applicant herein, applies for extension of time to appeal to this court against the decision of the District Land and Housing Tribunal for Kibaha, in Land Application No. 35 of 2017 dated 31st October 2018. Hearing of the appeal preceded by way of written submission.

The applicant submitted that, the decision intended to be appealed against was delivered on 31st October 2018 in favour of the respondents. On the same day he wrote to request for a copy of judgment and proceedings of the Land case No. 35/2017. The documents were given to him by the tribunal on 1st of March 2019, four months from the date of his request. At

the time when he received the documents he was already barred by the law of limitation to file his appeal. The applicant continued to submit that, he was subjected to inconvenience by the delay of the trial District Land and Housing Tribunal of Kibaha by its failure to supply him with the documents necessary for his appeal as requested. He contended that, it was not his fault to delay, rather the mistakes on the part of the tribunal itself, relying his contention on the decision of Kimaro J in ***Zepherine Bitegeko vs Burns and Brane (T) Ltd, Civil Revision No. 30 Of 2001 (Unreported)*** where it was held that:-

"... the proceedings in this case show that, the applicant has been subjected to problems and inconveniences because of court's fault. Under such circumstance it would be extremely unfair to deny the applicant right to be heard on his appeal because of mistakes done by the court itself."

He continued to submit that, there was no negligent on his part as he wielded his efforts necessary to obtain the copies of judgment, proceedings and decree on time. But the same were supplied to him after the time to appeal has lapsed. Therefore he couldn't appeal against the decision of the trial District Land and Housing Tribunal of Kibaha without applying for extension of time in accordance to section 41(2)Cap 216 as amended for him to appeal out of time. Further, the applicant insisted that, his appeal if allowed have overwhelming chances of success. That, the decision of the District Land and Housing Tribunal for Kibaha, contains a lot of illegalities and irregularities which need rectification by this court on appeal includint the fact that the chairperson erred in made decision without forming an

opinion of expert contrary to section 47 of the Evidence Act, (Cap 6 R.E 2002). Also that the respondent failed to call a key witness to the alleged settled contract contrary to the decision in the case of **Hemed Said v Mohamed Mbilu (1984) TLR 113** where the court held that:-

"Where for undisclosed reasons a party fails to call a material witness on his side, the court is entitled to draw an inference that if the witnesses were called, they could have given evidence contrary to the party interest."

He finally prayed for this court to allow the prayers sought in his affidavit and chamber summons and grant him a leave to appeal out of time.

On the other hand, the respondents jointly in opposing the application, submitted that, the applicant's application should not be allowed as he has not provided proof of the exact date when he wrote the letter to the tribunal requesting to be supplied with the purported copies of judgment, decree and proceedings. The copy of his latter annexed to his application do not show the exact date when the letter was written. They contended that, it is in the discretion of court to grant such application, but the applicant should give sufficient reasons for his delay in order to succeed in his application. He has to show that, he made some efforts to attain the copies of the said documents, thus he gives the court no material upon which to exercise its discretion as decided in **Rutagatina C.L v The Advocate Committee and Another, Civil Application No. 21 Of 011(Unreported)** in which the court held that:-

"an applicant in an application to take a certain step has to show cause good cause what prevented him from taking such step within the prescribed time. The question is whether good cause has been given to warrant him extension of time... lashes, mistakes, inaction and lack of due diligence in taking an appropriate step on the part of the applicant will negate sufficient cause".

They also cited the case of **Tanga Cement Co. Ltd Vs Jummanne Masangwa and Another, Application No. 6 Of 2001 (Unreported)** where it was decided that:-

"An application for extension of time is entirely in the discretion of the court to grant or refuse it. This unfettered discretion of the court however has to be observed judicially, and the overriding consideration that there must be sufficient cause for doing so" This application should be used accordingly to dismiss this application with costs."

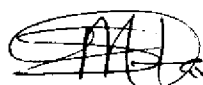
In his rejoinder, the applicant maintained that, it is obvious that, he has good reasons for his application to be allowed, the court should therefore grant him an extension to file his appeal out of time based on those reasons.

I am alive to the fact that granting an application for extension is a judicial discretionary power by the court that must be confined to the rules of reason and justice considering all relevant factors. It is a trite law that, a party seeking an extension of time to file an appeal has to show a good and sufficient cause for his delay.

In the present application, the applicant has shown that a reason for his delay is the failure of the trial District Land and Housing Tribunal to supply him with the documents needed to be accompanied with the memorandum of appeal (copies of judgment and decree). The applicant has provided sufficient proof that, he took efforts to request the said documents on the same day when the decision of the trial tribunal was delivered (31/10/2018). His request however, was honored four months later. So the applicant did not at all sit idle, he knocked at the doors of the tribunal in quest for justice immediately after the delivery of the trial tribunal's decision in favour of the respondents (*see Zuberi Mussa v Shinyanga Town Council, Civil Application No. 3 Of 2007, CAT*).

He stayed four months in vain waiting for the copies of judgment, proceedings and decree, from 31st of October 2018 to 1st of March 2019. It has been held ten times that, the time used in waiting for copies of judgment to enable him to appeal constitutes a good and sufficient reason for extension of time (*Mary Kimaro V Khalfan Mohamed (1995), TLR 202*).

In the circumstance, this court uses its discretion to grant the extension of sought by the applicant. The applicant has to file the intended appeal within thirty (14) days from the date of this ruling. I make no order as to costs.



M. P. OPIYO
JUDGE
23/9/2019