

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

**MISC. LAND CASE APPLICATION NO 828 OF 2018**

(Arising from the District and Housing Tribunal, Kibaha in Land Appeal No140 of 2017;  
Original Land Application No. 01 of 2014 of Kilangalanga Ward Tribunal)

**ZAINA MOHAMEDI MSANGI.....APPLICANT**

**VERSUS**

**LAMECK LUSONYEKWA.....RESPONDENT**

Date of Submissions: 07.08.2019  
Date of Ruling 20.09.2019

**RULING**

**V.L. MAKANI, J**

The applicant in this application is ZAINA MOHAMEDI MSANGI. She is praying for the following orders:

- 1. That this Honourable Court be pleased to enlarge the time in which the applicant can be allowed to appeal out of time.*
- 2. Costs of the case to be provided for.*
- 3. Any other remedies this Honourable Court deem fit and just to grant.*

The application is brought under section 38(1) of the Courts (Land Disputes Courts Act CAP 216 RE 2002 and it is supported by the affidavit of the applicant.

Irrespective that the respondent was served, he found it unnecessary to enter appearance. In the premises, the Court ordered the matter

to proceed ex-parte against the respondent. The application was argued by way of written submissions.

Upon reading the submissions and the affidavit by the applicant the main issue for consideration is whether the applicant has shown sufficient cause for this court to exercise its discretionary powers to extend the time within which to file an appeal against the judgment and decree of the District Land Tribunal Kibaha in Land Appeal No.140 of 2017.

The reasons for the delay as advanced in the application are found in paragraphs 4,5 and 6 of the applicant's affidavit, that is, the delay was on account of late receipt of the copies of the judgment and decree and thereafter the striking out of the application for extension of time for the reason that it was under the wrong provision of the law.

In order for the court to use its discretionary powers to grant extension of time, it must be satisfied that the applicant has accounted for the delay to take the necessary steps as was stated in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT)**(unreported) and the case of **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (CAT)**(unreported) where it was stated:

*"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".*

According to the affidavit and submissions by the applicant the judgment appealed against was delivered on 31/01/2017. The applicant requested for judgment, decree and proceedings by a letter dated 15/02/2017 and was furnished with the said documents on 08/02/2018. On 15/03/2018 the applicant filed her application for extension of time to file appeal out of time vide Misc. Land Application 106 of 2018 in this court whereby Hon. Kirefu, J on 29/08/2018 struck out the application for being brought under the wrong provision of the law. The applicant then filed this application on 16/11/2018. This clearly shows how the applicant accounted for the delay in filing the appeal.

Additionally, the applicant also showed diligence by writing a letter to request to be supplied with copies of the judgment, decree and proceedings (Annexure ZM1), and thereafter she made efforts to find a lawyer and file this application after her previous application was struck out.

The Court of Appeal in the cases of **John Ondolo Chacha vs. Dar Cool Makers Limited (CAT)**(unreported) and **Tanzania Revenue Authority vs. Yusuph Juma Yusuph, Civil Application No. 2 of 2014 (CAT)**(unreported) considered the delay of obtaining the copy of the decree as sufficient reason for granting an application for


extension of time. In case of **John Ondolo Chacha** (supra) the Court of Appeal stated:

*"...the undisputed facts are that the applicant obtained the necessary documents on 30<sup>th</sup> 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."*

In view of the above cited cases and reasons advanced in the applicant's affidavit and emphasized in her submissions, it is my considered view that the applicant has given good reasons to warrant this court to exercise its discretion to extend the time within which to file an appeal.

In the premise, I accordingly grant the application for extension of time to file an appeal out of time as prayed. I proceed to order the applicant to file the appeal within **fourteen (14) days** from the date of this ruling. There shall be no order as to costs.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**20/09/2019**