

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPLICATION NO. 58 OF 2019

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land
Application No. 37 of 2017)

FRED JONASI GONDE.....APPLICANT

VERSUS

USWEGE MSIKA.....RESPONDENT

RULING

Date of Last Order: 16/07/2020
Date of Ruling : 26/08/2020

MONGELLA, J.

The applicant is seeking for an a extension of time within which to file an appeal against the decision of the District Land and Housing Tribunal for Mbeya (the Tribunal) in Land Application No. 37 of 2017. The application is made under section 41 (2) of the Land Disputes Courts Act, Cap 216 as amended by the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2016 and is supported by an affidavit sworn by the applicant. Both parties appeared in person thus for interest of justice the application was argued by written submissions.



In his affidavit in support of the application, as well as in his submission, the applicant advanced one major reason for the delay in filing his appeal. This was to the effect that the Tribunal delayed in issuing copies of judgment and decree which are necessary documents in lodging the appeal. He averred that the Tribunal decision was pronounced on 27th August 2018. Thereafter he wrote a letter requesting for copies of judgment and decree, but the same were made available on 13th August 2019, which was almost eleven months after pronouncement of the judgment. He cited a decision of this Court in **Lewin Benard Mgala v. Lojasi Mtuka Mkondya & 2 Others**, Land Appeal No. 33 of 2017 (HC at Mbeya, unreported) in which it was decided that waiting for copies of judgment and decree amounts to sufficient reason in delay to file an appeal. He urged this Court to be guided by the same position of the law.

On his part, the respondent opposed the application on the ground that no sufficient cause was advanced by the applicant to warrant this Court to exercise its discretion in granting the extension of time. He argued that the reason advanced by the applicant to the effect that the Tribunal delayed in issuing copies of judgment is not true at all. He argued so saying that in accordance to a letter written by the applicant to the Registrar of this Court (Annexure 01 to the counter affidavit), the applicant thought he had won the case in the Tribunal. The respondent was thus of the view that the applicant had no any intention of appealing against the said decision, until later when he realised that he in fact lost the case. The respondent contended that if the applicant had intention of appealing against the said decision he should have applied for extension of time while waiting for copies of judgment and decree.



He as well challenged the averment by the applicant that he applied for copies of judgment and decree on 24th October 2018. On this he referred again to annexure 01 whereby the applicant stated that he applied for copies of judgment and decree on 14th September 2018. He said that the applicant has contradicted himself on the dates and has not attached any letter to prove his claim. With these arguments he prayed for the application to be dismissed.

I have considered the submissions by both parties and gone through the record presented in this Court. The law is settled to the effect that the time one waits for copies of judgment and decree has to be deducted in computing time limitation. This is provided under section 19 of the Law of Limitation Act, Cap 89 R.E. 2019. The position settled under this provision of the law was also underscored by the Court of Appeal in the case of ***The Director of Public Prosecutions v. Mawazo Saliboko @ Shagi & 15 Others***, Criminal Appeal No. 384 of 2017 (CAT at Tabora, unreported) whereby the Court ruled that the time one waits for issuance of the copies of judgment or proceedings has already been excluded under the law. The CAT in this case was discussing the application of section 379 (1) (b) of the Criminal Procedure Act, which is couched in similar terms as section 19 of the Law of Limitation Act. It follows therefore that the position settled by the CAT in this case overrules the stand that has been taken by this Court, by some of the judges to the effect that a party still has to seek for extension of time where the delay emanates from waiting copies of judgment, decree and proceedings. The settled position, as of now, is thus to the effect that a party need not apply for extension of time on the ground that he/she was



waiting for copies of judgment/decrees and or proceedings if after exclusion of that time he/she is still within the time limit.

In ***Samuel Emmanuel Fulgence v. The Republic***, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported) went further and ruled that the time should start to run from the date the copies were certified. This means that the time to be considered in determining whether a party is time barred or not is the date when the copies of judgment and decree were ready for collection, being the date the said copies were certified and not the date a party obtained the said copies.

The record of the Tribunal, as seen in the copy of judgment, clearly indicates that the judgment was delivered on 27th August 2018. The certification stamp shows that the copy was ready for collection on 13th August 2019. Thus basing on the above decisions from the CAT, the period of 45 days under which the applicant was to file his appeal started to count on 13th August 2019 when the copies of judgment and decree were certified, thus ready for collection. In essence, the respondent has not disputed the fact that the copies of judgement and decree were ready for collection on 13th August 2019. He only argued that the applicant ought to have filed for extension while waiting for the said copies, an argument I find totally misconceived.

The respondent also argued that the applicant did not attach copies of letters showing that he applied to be supplied with copies of judgment and decree. As much as I agree with him on the ground that such letters signify that the applicant was diligent in pursuing his appeal, I still find that



it shall be unjust to crucify the applicant on such ground. This is because courts have a duty to issue copies of judgment and decree to the parties even where the parties have not requested for one.

The record indicates that the applicant filed this application on 19th August 2019. This was exactly five days after the copies of judgement and decree were ready for collection on 13th August 2019. Considering the decision in **Mawazo Saliboko** (supra) and **Samuel Emmanuel Fulgence** (supra), the applicant was very much within time, only that the same was wasted in pursuit of this application. See also: **Aidan Chale v. The Republic**, Criminal Appeal No. 130 of 2003 (CAT at Mbeya, unreported). Under the circumstances, I grant the applicant extension of time within which to lodge his appeal. The applicant shall lodge his appeal within forty five (45) days from the date of this Ruling. Each party to bear his own costs.

Dated at Mbeya on this 26th day of August 2020.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 26th day of August 2020 in the presence of both parties appearing in person.




L. M. MONGELLA
JUDGE