

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

MISC. LAND CASE APPLICATION NO.201 OF 2019

*(Arising from the Judgement and Decree of the District Land and Housing
Tribunal for Kibaha in Land Appeal No 201 of 2017, dated 28th September, 2018
Before: Hon. S.L. Mbuga-Chairman)*

BALTAZARY KINASHA..... APPLICANT

VERSUS

PAULA BENARD NINDI.....RESPONDENT

RULING

M. P. OPIYO J:

Baltazary Kinasha, 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 Appeal No. 201 of 2017 dated 28th September 2018. Hearing of the application was by way of written submission. Both parties appeared in person.

In support of the application, the applicant submitted that, the decision intended to be appealed against was delivered on 28th September 2017, in favour of the respondent. The copies of Judgement and Decree were given to him by the tribunal on 4th March 2019, dated 21st February, 2019, one year and four months after the date of delivery of the said judgement. At the time when he received the documents he was already barred by the law

of limitation to file his appeal. Despite his efforts to make follow ups on the copies of judgement to be supplied to him on time, the Land and Housing Tribunal for Kibaha District failed to do so. The applicant insisted that, it was not his fault to delay, rather the mistake is on the part of the tribunal itself. He relied his contention on the decision of court in **Jonas Bethwel Temaba versus Paul Kisamo and Another, Civil Application No. 10 of 2013, Court of Appeal of Tanzania, at Arusha (unreported)** where it was held that:-

"In my considered opinion, the applicant has shown sufficient cause for failing to file the application for stay of execution in time. If the required documents were supplied to him in time definitely it would have been a waste of time and expenses to file the application. I grant him extension of time to file the application for stay of execution."

On the other hand, the respondent opposed the application, and maintained that, the dispute originated from the Ward Tribunal of Tangini Ward therefore there was no need to attach the judgement or decree during appeal. There is no provision of law where it is provided that, the applicant should wait for a judgement to enable him to file his appeal. Therefore his delay is due to his own negligence, thus his application should be dismissed for lack of merits.

In his rejoinder, the applicant maintained that, he wrote a letter to the tribunal requesting the copies of judgement on 5/10/2018, but he was not supplied with the same until on the dates mentioned in his submission in chief. Therefore this court should grant him an extension to file his appeal out of time based on those reasons.

After these rivalry contention of the parties as evidenced in their submissions, I took my time to go through the application along with the submissions from both parties.

The law is clear that, a party seeking an extension of time in court has to show a good and sufficient cause for his delay. He is also supposed to account for each day of the delay before the decision is given in his favour. It is also settled that, what amounts to a sufficient cause should be decided based on circumstances of each individual case and evidence of the case at hand {see **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD CAT Civil Application No. 13 of 2010 (Mwanza Registry, (unreported))**}.

In the present application, the applicant has stated that a reason for his delay is the failure of the trial District Land and Housing Tribunal to supply him 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 (28/09/2018). His request for the documents on 5/10/2018 as stated in his rejoinder submissions, however his request was honored four months later on 21/2/2019. 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 **Zubeiry Mussa vs Shinyanga Town Council, Civil Application No. 3 OF 2007, CAT**). The time used in waiting for copies of judgment to enable him to appeal constitutes a good and sufficient reason for extension of time (see **Jonas**

Bethwel Temaba versus Paul Kisamo and Another (supra) and Mary Kimaro vs Khalfan Mohamed (1995), TLR 202)

It is also a common understanding that allowing an application for extension of time falls within the discretionary powers of the court after consideration of all relevant factors of a particular case. I am alive to the fact that this matter originated from the Ward Tribunal of Tangini Ward therefore there was no mandatory requirement to attach the judgement or decree during appeal as argued by the respondent. However, given the fact that the applicant is an unrepresented lay person, having the copies forms a basis of his understanding of the nature of the decision desired to be appealed against in consultation with a legal mind. Thus, without a copies it would not be easy to know even what exact to appeal against. So in the circumstances of this particular case having the copies was important in processing the appeal. Since it is not disputed that the copies were availed to him late, after the expiration of the period prescribed for appeal, I see it wise and just, to use this discretion accordingly and grant the extension of time sought by the applicant. The applicant has to file the intended appeal within fourteen (14) days from the date of this ruling.

No order as to costs.



**M. P. OPIYO,
JUDGE
9/3/2020**