

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

MISC. LAND CASE APPLICATION NO 435 OF 2019

(Originating from Temeke District Land and Housing Tribunal in Land Application No. 2 of 2014)

ABDUL MOHAMED MBWELA.....APPLICANT

VERSUS

HAMIS MWASILULIMA (Administrator of the Estate of

FATUMA HAMIS).....**1ST RESPONDENT**

JULIUS KIKOPO MWANGAMBAKU.....2ND RESPONDENT

Date of Last Order: 04.11.2020
Date of Ruling 07.12.2020

RULING

V.L. MAKANI, J

The applicant ABDUL MOHAMED MBWELA is seeking for orders of extension of time within which to file an appeal against the decision of Temeke District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 2 of 2014.

The application has been made under section 41(2) of the Written Laws (Miscellaneous Amendments) (No.2) Act, 2016. The application is supported by the affidavit of the applicant herein. Respondents did not enter appearance even after being served by way of publication in Mwananchi Newspaper. The matter therefore proceeded ex-parte

against the respondents and Mr. Steven Lukiko, Advocate represented the applicant.

Submitting in support of the application, Mr. Lukiko prayed to adopt the contents of applicant's affidavit and said that the applicant had filed similar application but was struck out for wrong citation of the law and non-adherence to the procedures of filing electronically. He added that, after the delivery of judgment in 19/06/2015 he immediately requested for copies of judgment, decree and proceedings on the same date vide his letter to the Tribunal (**Annexure AB4**). He said that he received the copies on 12/08/2015 which is about 54 days after delivery of the judgment and that was out of time to file appeal. He said that the applicant was making follow-ups to the Tribunal for the copies of judgment and decree. He said that all the factors (including the striking out of the application) were associated with technical errors. He supported his position with the case of **Mustafa Ebrahim Kassam vs. Maro Mwita Maro, Misc.Comm No.64 of 2018 (High Court, Com. Division – DSM)** (unreported). He said that all time the applicant was in court trying to get copies of judgment and decree and filing incompetent applications must be excluded. He relied on section 19(2) of the Law of Limitation Act and the case of **The Registered Trustees of the**

Marian Faith Healing Centre @ Wanamaombi vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese, Civil Appeal No.64 of 2007 (CAT-DSM) (unreported).

He argued the court to apply the principle of overriding objective and prayed for this application to be granted.

Having gone through the affidavit and submission from the applicant, the issue for determination is whether this application has merit.

The reasons stated by the applicant for his delay in filing appeal is that he lately received the copies of the judgment and decree from the Tribunal. As per the records, the judgment was delivered on **19/06/2015**, the applicant wrote a letter requesting for copies on the same day, further, the judgment was certified and therefore ready for collection on **25/06/2015**. The applicant claimed to have received the copies of the judgment and decree on **12/08/2015**. However, for reasons not stated anywhere, the applicant remained silent for more than a year until **21/02/2017** when he filed an incompetent application which was struck out on the grounds of wrong citation of enabling provision. In paragraph 4 of his affidavit, the applicant stated that on **17/04/2019** he filed another application

which was struck out for non-compliance of an electronic filing. It was about two years from when the first application was struck out. Again, the applicant has not accounted anywhere for such a long period of delay. The record shows that this application was filed on **29/07/2019**, three months from when the second application was struck out, and as it was in the former applications, the applicant has not managed to account for the delay. The applicant was represented by the learned advocate who could lead the applicant in accounting for the days of delay (if any) but that was not done.

The applicant prayed to apply the overriding objective principle, but my understanding is that the issue of delay and not accounting for the said delay is not a mere technicality but goes to the root of the matter. Consequently, the principle of overriding cannot be easily applied as suggested by the applicant to bend the rules which are the basis of the application (see the case of **District Executive Director Kilwa District Council vs Bogeta Engineering Limited, Civil Appeal No. 37 Of 2017 (CAT-Mtwara)** (unreported)).

Having failed to account for the delay, I firmly hold that the applicant has not established sufficient cause for his delay in filing the appeal.

For that reason, I find this application with no merit and it is hereby dismissed with costs.

It is so ordered.



A handwritten signature in blue ink, reading "V.L. Makani".

V.L. MAKANI
JUDGE
07/12/2020