

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

MISC. LAND CASE APPLICATION No. 516 OF 2019

HAMIS OMARY DISOMBA.....1ST APPLICANT
MDIGWA SHABANI SIMBA.....2ND APPLICANT

VERSUS

**TANZANIA SEWING MACHINE ASSEMBLING
AND MAUFACTURING COMPANY LIMITED.....RESPONDENT**

Date of last Order: 30.02.2020
Date of Ruling: 27.04.2020

RULING

V.L. MAKANI, J

The applicants have moved this court under section 41(2) of the Land Disputes Courts Act R.E 2002, Act No. 2 of 2002 seeking for extension of time to appeal against the judgment and decree of the Ilala District Land and Housing Tribunal (the **Tribunal**) in Application No.424 of 2016. The application is supported by the affidavits of the applicants.

With leave of the court the application was argued by way of written submissions. Whereas the applicants drew and filed their submissions, the respondent who was represented by Jerome Msemwa, Advocate of Davos Attorneys, never filed her written submissions as was ordered by the court on 13/11/2019.

Now, what are the consequences of failing to file written submissions as per the court's order? Failure to file written submission is akin to failure to appear and prosecute or defend your case. In the case of **Lucy Kasonde Makinda vs. Zaina Abdallah Making'inda, Misc. Application No. 72 of 2019, (HC-Land Division)** (unreported) Hon. A. Mohamed J (as he then was) had this to say:

"It has been held in a catena of this Court's decisions that failure to file written submissions as ordered is akin to failure to appear on a hearing date and bears similar consequences....."

See also the case **National Insurance Corporation of (T) Ltd and another vs. Shengena Limited, Civil Application No.20 of 2007** which was cited with approval in the case of **Godfrey Kimbe vs. Peter Ngonyani, Civil Appeal No.41 of 2014 (CAT-DSM)** where the Court observed that:

"The applicant did not file submission on due date as ordered. Naturally, the Court could not be made impotent by a party's inaction. It had to act...it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."

In view of the above, since no written submissions was filed by the respondent according to the order of this court, then this is equated to non-appearance on the hearing date and the consequence thereof is for the application to proceed ex-parte against the respondent as it is hereby ordered.

Submitting in support of the application, the applicants stated that they were aggrieved by the decision of the Tribunal delivered on 02/05/2019. They further stated that on 10/05/2019 they wrote a letter requesting for the copies of judgment and decree. They added that after constant follow-ups they were supplied with the copies on 01/08/2019. They said by the time they received the copies of the judgment and decree they were already out of time to file their appeal as prescribed by the law. Further, they argued that their appeal has a likelihood of success. To support their argument, they relied on the case of **Samson Kishosha Gabba vs. Charles Kingongo Gabba [1990] TLR 133**. They insisted that they have relevant reasons for delay and as well stand a chance to win the intended appeal and therefore pray for the application to be allowed.

I have gone through the affidavit and the submissions by the applicants herein. It is a settled principle of the law that an application for extension of time is entirely the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (see **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported)).

The main reason by the applicants for failure to file their appeal is delay in obtaining copy of the judgment and decree which are documents necessary in the filing of an appeal. The records show that the said judgment was certified on 25/07/2019 and which is presumed to be the date for collection of the said judgment and

decree. The applicants stated in their affidavit that they received the copies of the judgment on 01/08/2019 after making follow-ups (paragraph 5 of the affidavit). Additionally, the applicant also showed diligence by writing a letter to request to be supplied with copies of the judgment, decree and proceedings (Annexure M2), and thereafter they made efforts to file this application on 10/09/2019.

Considering that the applicants are laypersons and they have made extraneous efforts to make sure that they make this application and for purposes of filing of appeal, I find that the chain of events accounts for the days of the delay.

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 30th 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 affidavits and emphasized in their submissions, it is my considered view that the applicants have 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 applicants to file the appeal within **thirty (30) 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