

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

MISC. LAND APPLICATION NO. 316 OF 2020

*(Arising from Land Application No. 42 of 2014 Kinondoni District Land
and Housing Tribunal)*

KASSIM SALUM MHAGAMA

(Administrator of Estates of the late TABU PAZI

MWINYIMVUA.....APPLICANT

VERSUS

ABDULLAHAMAN MOHAMED HOZA.....1ST RESPONDENT

MAJID MSUYA.....2ND RESPONDENT

INNOCENT JASTIN.....3RD RESPONDENT

ROBERT D. MASUNGA.....4TH RESPONDENT

CASSTAN C. MAHUNDI.....5TH RESPONDENT

EMMANUEL S. RUTAMBUKA.....6TH RESPONDENT

JAMILA S. DEBWE.....7TH RESPONDENT

REHEMA M. MTORO.....8TH RESPONDENT

FRANK PILIPILI.....9TH RESPONDENT

SEGUBA ALLY.....10TH RESPONDENT

ALLY HAMIDU KUMENYA.....11TH RESPONDENT

GETRUDA BENEDICTO MILINGA.....12TH RESPONDENT

TUKAE RAJABU MZINDU.....13TH RESPONDENT

RULING

S.M. MAGHIMBI, J:

The applicant has lodged this application under the provisions of Section 41(2) of the Land Disputes Courts Act, Cap 216 R.E of 2019 and Section 14(1) of the Law of Limitations Act, Cap. 89 R.E 2019. He is seeking for extension of time within which to file an Appeal against the decision of District Land and Housing Tribunal of Kinondoni ("The Tribunal") in Land Application No. 42/2014 dated 31/03/2020. He further sought for an order for costs and any other incidental order as may be necessary to make. The application was supported by an affidavit of the applicant dated 10th June, 2020.

In this application the applicant appeared in person and unrepresented while the 1st and the 2nd respondents were represented by Mwami M. Kiozya, Advocate. On the 23/11/2020, the court ordered the application to be disposed by way of written submission, however it was the applicant, the 1st and the 2nd respondents who adhered to the schedule of submissions, the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and the 13th respondents did not file their submissions. It is a trite law that failure to submit the written submission as ordered by the court is tantamount to non-appearance in court at the date of the hearing, therefore this application was heard *ex parte* against the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and the 13th respondents.

In his submissions to support the application, the applicant prayed for this court to adopt his affidavit so that it can make part to his submission. He then submitted that the judgment of the Tribunal was delivered on the 31st March 2020 and on the 7th April 2020, he wrote a letter to the Tribunal so that he can be supplied with the copies of the judgment and decree for the purposes of appealing to this court. That he did make follow ups for those copies to the tribunal but in vain.

The applicant submitted further that he said that the copies were ready for collection on 13th April 2020 but he was not notified until on the 03rd June, 2020 when he went to check if the copies were ready. He collected it on the same day and approached the lawyer for the preparation of the documents for the appeal, but realized that he was out of time hence filed this application on 12th June 2020 for the extension of time.

He argued that waiting for the collection of copies of judgment and decree is the sufficient reason warranting this court to extend time citing the case of **Lewina Bernad Mgala Vs. Lojasi Mtuka Mkondya & 2 Others, Land Appeal No.33 of 2017**, HCT, District Registry at Mbeya (unreported) where the position was held. The applicant finalized his submission by praying that this court extend time within which he can file an appeal out of time.

In reply, Mr. Kiozya submitted that after the judgment was delivered on 31st March 2020, the 1st and the 2nd respondents on 3rd April 2020 applied for the copies of judgment and decree which were handled to them on the 13th May 2020. That the applicant delayed in applying for the copies of judgment and decree and when those copies were ready

for collection he again delayed in collecting the same. He argued that the applicant has failed to substantiate cogent reasons within which the court to exercise its discretion to enlarge time for the applicant to file an appeal out of time. To support his argument, he cited the case of **Lyamuya Construction Company LTD Vs. Board of Registered Trustee of Young Women's, And Christian Association of Tanzania, Civil Application No.2 Court of Appeal of Tanzania (Unreported)**. Mr. Kiozya finalized his submission by praying that this court dismiss the application with costs.

I have gone through the records of this application and the parties submissions for and against the grant of this application; the main issue for determination is whether the applicant has adduced sufficient reasons to warrant this court to exercise its discretionary powers to grant extension of time. My observation is that the judgment was delivered on the 31/03/2020 and on 07/04/2020 he applied for the copies which were certified and ready for collection on 13/5/2020. The applicant collected the copies on 03/06/2020 and this application beforehand was filed on 12/06/2020 which is 9 days after the day he collected the copies. It was also only 30 days from the date the documents were ready for collection and there is no record showing that the applicant was informed that the copies were ready, therefore his delay to collect them for 20 days is by all means reasonable. The situation would have been different if the applicant didn't make follow up on the copies for about a month or more, but the period of 20 days is not inordinate.


The provisions Section 19(1) of the Limitation Act is clear that in computing the time of limitation, the period requisite to obtain copies of

judgments and rulings should be excluded. Hence the counting of limitation period should have started on the 13/05/2020 when the copy of judgment was ready for collection hence even on the 12/06/2020 when the current application was filed, the applicant would still be within the time requisite to lodge an appeal, let alone being cautious to have filed the current application for extension of time before the expiration of such time. The chronology of events to the filing of this application have satisfies me that there are good grounds for delay hence my discretion in extending time to the applicant.

Consequently, the application beforehand is hereby granted and time is hereby extended for the applicant to lodge his intended appeal which shall be lodged within thirty (30) days from the date of this ruling. Costs shall follow cause in the intended appeal.

Application Allowed

Dated at Dar-es-salaam this 11th day of March, 2021.



S.M MAGHIMBI

JUDGE

