

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

MISCELLANEOUS LAND CASE APPLICATION NO. 361 OF 2020

AIDAN S. MWAKAPILA.....1ST APPLICANT

IRENE MWAKAPILA.....2ND APPLICANT

VERSUS

LUCAS W. TAIRO.....1ST RESPONDENT

FATUMA MMINDU.....2ND RESPONDENT

RULING

S.M. MAGHIMBI, J:

The applicant has moved this court under the provisions of Section 41(2) of the Land Disputes Courts Act Cap 216 R.E 2019 (“the Act”) and any other enabling provisions of the law. He is seeking for extension of time to appeal against the judgment and decree of the District Land and Housing Tribunal for Kinondoni at Mwananyamala (“the Tribunal”) in Application No. 501 of 2016, and costs of this application. The application is supported by an affidavit of the 2nd Applicant, Irene Mwakapila dated 30th June, 2020. In this application, the applicants were represented by Mr. Erasmus D. Buberwa, learned Counsel whereas the 1st respondent enjoyed the services of Mr. Sylveser Eusebi Shayo, learned Advocate. The 2nd respondent appeared in person and unrepresented.

This application was disposed by the way of written submission and the parties adhered to the court's schedule of submission except for the 2nd respondent who did not file her submission, failure of which is tantamount to non-appearance to the date of hearing. Therefore this case proceeded ex parte against the 2nd respondent.

Submitting in support of the application, Mr. Buberwa, prayed to adopt the affidavit of the 2nd applicant to form part of his submissions. He then submitted that the ruling of the Tribunal was delivered on 15/05/2020 and the applicants timely obtained the copies of the ruling and drawn order of which they are intending to appeal against. However, he submitted, the applicants delayed in obtaining the copy of the proceedings which were supplied to them on 24th June 2020. That by the time the applicants obtained a copy of the proceedings, the 45 days time prescribed by the law within which to appeal, had lapsed.

He continued to submit that at the Tribunal, the applicants were not represented therefore after obtaining the ruling, drawn order and the proceedings they decided to look for the lawyer to represent them on appeal. That they handed their documents to their lawyer on 25th June 2020 and the lawyer completed his work on the 30th June 2020 and on the same day he filed the documents electronically. That there were certain procedural delays encountered before being admitted and finally on the 6th July 2020 the case was filed.

Mr. Buberwa further submitted that the appeal which is intended to be filed involves several points of law which that the exhibits relied upon to

determine the case were not properly signed nor contrary to the provisions of Order 13 Rule 4 of the Civil Procedure Code, Cap 33 R.E 2019. That the applicants filed the case in forma pauper but the tribunal awarded costs to the respondents. Mr. Buberwa supported his submissions by citing the case of **Principal Secretary, Ministry of Defense and National Service Vs. Devram P. Valambhia and Kalunga & Co. Advocate Vs. National Bank of Commerce Limited** (.....) where time was extended for the purposes of hearing and determining the point of law so raised. He finalized his submission by praying for the court to grant the application with costs.

In reply, Mr. Shayo submitted that according to the 5th paragraph of the affidavit sworn by the 2nd respondent, the applicants obtained the copies of the decree and drawn order on the 15th May 2020; a fact which is admitted by the 2nd applicant Irene Mwakapila. That the applicants failed to show good and sufficient cause for the court to extend time within which they could appeal out of time as the applicant obtained copies of the ruling and the drawn order timely but decided to wait for the proceedings which were supplied to them on the 25th June 2020. That the copies of the proceedings are not necessary documents for lodging an appeal. To support his argument, he cited the case of **Cecilia Malamula Vs. Jumbe Khamisi and Another, Misc. Land Case Application No. 242 of 2016** (unreported) where the court held that:

"it is the settled law that appeals of matters originated from the District Land and Housing Tribunal as in this case, copy of judgment and decree/order appealed from are not necessary component by

virtue of Order XXXIX Rule 1(1) of the Civil Procedure Code Cap 33 R.E 2002. This Order does not make it mandatory requirement for a copy of proceedings to be attached to accompany the memorandum of appeal at the time of filing. It is my considered view that the reason advanced by the counsel for the applicant does not hold water because if the applicant had been diligent enough, she could appeal within time on the basis of the document already supplied to her because the copy of proceedings is not relevant document envisaged by Order XXXIX Rule 1(1) of the Civil Procedure Code Cap 33 R.E.2002.

Mr. Shayo continued to submit that the applicants' assertion that they encountered delays before the documents were admitted and filed on 06.07.2020 is a new fact which is not stated in the founding affidavit therefore it might not be taken into account in deciding this application. Further that there was no proof offered on the said difficulties in filing the documents. Mr. Shayo finalized his submission by praying that the court dismiss the application with Costs.

Having gone through the submissions by the learned Counsel, the issue is whether the applicant has adduced sufficient reasons to move this court to grant extension of time within which to file an appeal. As per the records, the ruling in the Tribunal was delivered on 15/05/2020. The judgment and decree of the tribunal were timely issued and the only ground advanced by the applicant is that there was a delay in getting copies of the proceedings so that their advocate can know which grounds of appeal to rise. That the copies of the proceedings were supplied to them on 24th June 2020,

handled it to their lawyer on the 25th June 2020 who prepared the documents and on the 30th June 2020 filed those documents electronically but due to some procedural delays the documents were filed on the 06th July 2020.

The respondents' contentions is that the instant application was filed on the 06th July 2020 while the ruling was delivered on the 15th May 2020 and the copies were timely supplied to the applicants that is on the same day the judgment was delivered. The 1st respondent's main concern is the failure by the applicants to account for each day of the delay.


In the case of **Valerie McGovern v. Salim Fakhrudin, Civil Application No. 11 of 2015, CAT, at Tanga** it was held that:

"The law is settled...that no particular reason or reasons have been set out as standard sufficient reasons. What constitutes good cause cannot therefore be laid down by hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case."

In the present circumstances, the copies of the ruling were supplied to the parties on time that is on the 15th May 2020 the same day the ruling was delivered but this application for extension of time was filed on the 06th July 2020 that is 52 days from the date when the ruling was delivered. According to Section 41(2) of the Cap. 216, the time for filing an appeal is 45 days for which, the day that the judgment was delivered is not accounted for. So the counting will start on 16th May 2020 which is a weekend, meaning that computation will start of 18/05/2020 and the 45

days ended on 02/07/2020. Therefore by the time this application was lodged, the applicant had delayed to lodge an appeal for a period of only 2 days. Logically, a delay of two days cannot be termed as an inordinate delay to deny the applicants the orders sought. It is a reasonable delay which the court can flexibly exercise its discretionary powers to extend time. Owing to that, this application is allowed, the applicant's time to lodge appeal is extended and the intended appeal shall be lodged in court with 30 days from the date of this ruling. Costs shall follow cause in the intended appeal.

Dated at Dar es Salaam this 23rd day of March, 2021.



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S.M. MAGHIMBI
JUDGE