

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

MISC. LAND CASE APPLICATION NO.249 OF 2020

AHAMAD JUMA.....APPLICANT

VERSUS

NEEMA MORICE JONATHANI.....RESPONDENT

RULING

M. OPIYO, J.

The applicant is seeking for a leave from this court so as to file an Appeal out of time against the decision of Ilala District Land and Housing Tribunal entered in Land Appeal No. 9 of 2019, dated 29th May, 2019, by Hon. Mgulambwa M, the learned Chairperson. The application was made under section 38(1) of the Land Disputes Courts Act, Cap 216 R.E 2019 and accompanied by the affidavit of Ahmad Juma, the applicant himself. It was heard by way of written submissions, the applicant appeared in person while the respondent was represented by Mr. Jamhuri Johnson, learned Advocate.

Submitting for his application, the applicant argued that, the reasons that led to his delay to file his intended appeal in time is the fact that he was not given the copies of the impugned judgment and decree on time regardless of his efforts to remind the District Land and Housing Tribunal for Ilala District through a letter dated 13/6/2019. He was supplied with

the copies on 7th October 2019 after the same being certified on 30th of September 2019. That was more than three months later. Thereafter he started to look for a legal assistance as he is a layperson to prepare the application for him before he finally filed the same in court. From that he submitted that, the delay was caused by the reasons beyond his control which according to him are sufficient enough to allow this application. He cemented his arguments by citing the case of **Samson Kishosha Gabba versus Charles Kingongo Gabba, (1990) TLR 133**, where it was held that, in determining whether or not to allow an application for leave to appeal out of time, the reasons for delay is one of the factor to look into. He prayed for the application to be granted.

In reply, the counsel for the respondent dwelled in the case of **Wambele Mtumwa Shahame versus Mohamed Hamis, Civil Reference No. 8 of 2016, Court of Appeal of Tanzania at Dar Es Salaam, (unreported)** where the court laid down two conditions to be considered in allowing the application for extension of time to be allowed. These are, first, existence of a good and sufficient cause and/ or reason for delay and second, length of delay. He therefore insisted that, the reasons for delay advanced by the applicant that he was not availed with the copies of judgment within time cannot amount to a sufficient cause. After all, there is inordinate delay for the applicant, as per what is on record, the applicant requested the said copies 16 days later after the delivery of the judgment. Secondly the applicant never furnished any proof to substantiate his allegations that he was making follow-ups for the documents in question. In other words, the applicant was negligent in pursuing his course within time hence he cannot benefit out of his

negligent acts as stated in **Alison Xerox Sila versus Tanzania Habours Authority, Misc. Civil Reference No. 14 of 1998 (unreported)**, as cited in approval in the case of **Hussein Manyama versus Chairman of Lupiro and Another, Misc. Application No. 78 of 2018, High Court of Tanzania at Dar Es Salaam (unreported)**, that;

"Lapse, in action or negligence on part of the applicant seeking extension of time, does not constitute sufficient cause to warrant extension of time."

The counsel for the respondent went on to argue that, the delay by the applicant to file his intended appeal is too long and it is not known why the applicant requested the copies of judgment and decree after 16 days. This is a proof that the applicant has failed to account for each day of delay as stated in **Bushfire Hassan versus Latifa Mashayo, Civil Application No. 3 of 2007**, as cited with approval in the case of **Wambele Mtumwa Shahame, (supra)**, he submits. In this case the court observed that:-

"delay even a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

He consequently prayed for the application to be dismissed for want of merits.

In his rejoinder, the applicant insisted that, the allegations by the respondent's counsel that, the applicant delayed for 16 days to request for copies of judgment and decree is unfounded. The applicant took all necessary steps in time, but, the documents reached him late.

I have given the submissions by parties the weight they deserve. The issue that needed to be addressed in this application is whether the applicant has a sufficient cause for his application to be allowed. The applicant has stated straight away that, he was not availed with the copies of judgment and decrees within time. And after being supplied with the copies, he spent a considerable time looking for legal assistance to help him with the guidance he needed in a bid to pursue his intended application. From what is on the records, it is my considered view that, the applicant has managed to provide sufficient reasons warranting his application to be allowed (**see Samson Kishosha Gabba versus Charles Kingongo Gabba**, (supra)). Records revealed that, indeed the applicant was not supplied with the said copies of the judgment and decree within the 45 days period which he was supposed to appeal. Although he applied for the same within those 45 days, but he waited in vain until 30th of September, 2019 when the said copies were certified and the same availed to him on 7th October 2019, just 7 days after the certification. That alone constitutes a period of about 5 months already accounted for. He managed to file Misc. Land Application No 589/2019 which was however struck out on 27/4/2020. That is when he immediately filed the current application on 12th May, 2020 after getting assistance from the Legal Assistance and Social Welfare of Tanzania. This shown

how serious the applicant was in pursuing his rights. He was therefore not negligent as pointed out by the respondent.

In the event, I find merit in this application, the same is hereby allowed. The applicant is ordered to file his intended appeal with 14 days from the date of this ruling.

Ordered accordingly.



A handwritten signature in blue ink, appearing to be "M. P. Opiyo", written over a horizontal line.

M. P. OPIYO,
JUDGE
2/7/2021