

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

MISC. LAND CASE APPLICATION NO. 362 OF 2020

(Originating from the decision of Temeke District Land and Housing Tribunal in Misc. Land Application No.183 of 2013)

MASOUD ALLY.....1ST APPLICANT

JUMA RASHIDY MOBITY &

MUSA NJECHELE (Administrators of the estate

of the late Zubery Ally)2ND APPLICANT

VERSUS

RIZIKI SALUM.....RESPONDENT

Date of Last Order: 28.01.2021

Date of Ruling: 15.03.2021

RULING

V.L. MAKANI, J

The applicants above are applying for extension of time to appeal to this court, against the decision of Temeke District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 183 of 2013.

The application is made under section 41(2) of the Written Laws (Miscellaneous Amendment) (No.2) Act, 2016 and section 14 (1) of the Law of Limitation Act, Cap 89 RE 2002 (the **Limitation Act**). The application is supported by the affidavits of applicants. Mr. Joseph

Wilbroad Kayombo, Counsel for the respondent swore and filed a counter affidavit in opposition of the application.

With leave of the court the application was argued by way of written submissions. Legal and Human Rights Centre drew and filed submissions gratis on behalf of the applicants. The respondent personally drew and filed his own submissions.

Submitting in support of the application, the applicants said that they applied for certified copies of judgment and proceedings for the purpose of filing an appeal and made several follow ups. They said that on 13/02/2020 the said copies were ready for collection, but the applicants failed to file the appeal on time as they were not timely supplied with the copies. They insisted that they had applied for the copies through a letter (**Annexure LHA 1**). They relied on the cases of **Steven Chaula vs. Moshi Nasibu, Misc Land Appeal No.842 of 2018** (unreported), section 14(1) of the Limitation Act and section 93 of the Civil Procedure Code, Cap 33 RE 2002 (the **CPC**). They prayed for the application to be granted.

In reply the respondent said that, the allegation by the applicants that there was a delay in receiving copies of the judgment and proceedings by the Tribunal are unfounded and not true. He said the judgment of the Tribunal was delivered on 27/12/2019 in the presence of the applicants. He said that on the date of judgment delivery, the Chairman announced to the parties that he had three copies of the decision and could give one copy to Musa Njechele (2nd applicant) as he had eye problems and that they all left without copies since they had no money. He said that on 10/01/2020 representatives of the respondent went to the Tribunal for the copies, and they were supplied with the copies vide Receipt No.991172613787 of 10/01/2020. He insisted that the copies were ready for collection from the date of judgment.

The respondent further said that the applicants alleged to be supplied with the copies on 13/02/2020 and made application on 24/03/2020, that means that there are 40 days which no action was taken, and no reasons have been assigned. He insisted that the applicants altogether have stayed for 88 days before they applied for extension of time. He added that **Annexure LHA 1** is not the letter through which the applicants applied for the copies instead they contain proceedings and

receipts for Tsh 84,000/= . He further said that section 93 of the CPC cited by the applicant refers to orders which are given by courts and not those fixed by the legislature. He insisted that there is no letter by the applicants applying for the copies of the Tribunal's decision.

There was no rejoinder that was filed by the applicant.

Having gone through affidavits and submissions from the parties. The main issue for determination is whether this application has merit. The main reason adduced by the applicants for the delay in filing their appeal is that they were not timely supplied with judgment and proceedings by the Tribunal. The record shows that the judgment of the Tribunal in Land application No.183 of 2013 was delivered on 27/12/2019. Further, the records are very clear that, on the same day, copies of the judgment were certified, which means the copies were ready for collection on the same day that the applicants herein (then respondents) were present in court. There is no formal application of the copies of the judgment and proceedings by the applicant. **Annexure LHA 1** to the affidavit which the applicants allege to be a request letter for the said copies, is in fact a receipt which does not clearly show what was paid for. There is no evidence to show that the

applicant had applied for the copies at any time. This court is therefore fully satisfied that the copies of the judgment and proceedings were ready for collection on the same date when judgment was delivered on 27/12/2019. In that respect, the applicants filed this application on 08/07/2020 more than six months later. The reason for the delay given by the applicants is therefore not sufficient to warrant this court to invoke its discretionary powers to extend time within which to file an appeal,

In the result the application has no merit, and it is hereby dismissed with costs.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
15/03/2021