

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

**MISC. LAND CASE APPLICATION NO. 01 OF 2020**

**(Arising from the decision of the District Land and  
Housing Tribunal for Kilombero/Ulangu District at  
Ifakara in Land Appeal No. 170 of 2019)**

**COSTA SIMON FUNDISHA ..... APPLICANT**

**VERSUS**

**YUSTA ABRAHAM MWAKALEBELA..... RESPONDENT**

**RULING**

Date of Last Order: 23/07/2021 &  
Date of Ruling: 30/07/2021

**S.M. KALUNDE, J.:**

This ruling answers an application for extension of time within which **Costa Simon Fundisha**, the applicant, can file an appeal against the decision of the District Land and Housing Tribunal for Kilombero/Ulangu District at Ifakara (**"the tribunal"**) dated 21<sup>st</sup> October, 2019 in **Land Appeal No. 170 of 2019**. The application is brought by way of chamber summons under **section 38(1) of the Land Disputes Court Act, Cap. 216 R.E. 2019**. The application is supported by an affidavit sworn by the applicant.

In his affidavit the applicant contended that delay in filing the appeal was occasioned by delay in being supplied

with certified copies of the judgment and decree of the decision sought to be challenged. The applicant pleaded that the decision of the tribunal was delivered on 21<sup>st</sup> October, 2019 in favour of the Respondent. Aggrieved by that decision, on 31<sup>st</sup> October 2019 he allegedly requested to be supplied with certified copies of the judgment and decree. Despite several follow-ups the certified copies of the decision were not supplied to him until on 19<sup>th</sup> December, 2019 when the same were furnished to him. Having been supplied with the certified copies of the judgment and decree, on 02<sup>nd</sup> January 2020, the present application was filed. The applicant pleaded that, delay in filing the appeal was attributable to the tribunals delay in supplying him with certified copies of the judgment and decree.

In response, the respondent swore a counter affidavit in which she denied all the applicants claims in the affidavit. She appealed that the applicant has failed to demonstrate good cause for the grant of the application. In the end she prayed the application be dismissed with costs.

Leave of the Court was granted for the application to be disposed by way of written submissions. I thank both parties for their compliance with Court orders in filing the written submissions.

The applicants' submission in chief was brief. He recited the contents of the affidavit and stated that the failure in filing

the appeal was attributed to the delivery of the judgment of the tribunal in English and Kiswahili languages which confused him. He also stated that the delay in filing the appeal was due to delay in being supplied with certified copies of the judgment and decree of the tribunal. He also alluded that, if the application is not granted, he stands to suffer irreparable loss and that the intended appeal had abundance chances of success.

Responding to the above arguments, the respondent contended that, in accordance with **section 38(1) of the Land Disputes Court Act** (supra) certified copies of the judgment and decree of the tribunal were not a requirement for filing an appeal originating from the decision of the ward tribunal. The respondent reasoned that the applicant should have filed the petition of appeal at the tribunal and the records should have been forwarded by the tribunal not the applicant. Based on the above point, the respondent was of the considered view that the application lacked merit and ought to be dismissed with costs.

In rejoining the applicant maintained that his failure in filing the appeal was occasioned by failure to understand the outcome of the decision which was delivered in English language. As a result, he awaited to obtain the certified copies of the judgment and decree of the tribunal to obtain assistance in translating the decision. He reminded the Court

that refusal in granting the application will result into irreparable loss and that the intended appeal had abundance chances of success.

I have carefully considered the arguments from both parties. The question for my determination is whether the application is merited. There is no dispute that the present application relates to an application that was originally filed before the **Mbasa Ward Tribunal in Case No. 05 of 2019**. That said, in determination of this appeal, I will be guided by the provisions of **section 38(1) of the Land Disputes Court Act** (supra) which is quoted here under:

*"38.- (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:*

*Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.*

*(2) Every appeal to the High Court shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought.*

*(3) Upon receipt of a petition under this section, the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing*

***Tribunal to the High Court.” [Emphasis mine]***

My understanding of the above provisions, in the context of the matter before me, is that an appeal from the decision of the District Land and Housing Tribunal in the exercise of its appellate may be filed, by way of petition, within sixty (60) days after the date of the decision. The petition must be logged with the District Land and Housing Tribunal. On receipt of the petition the tribunal shall, within fourteen (14) days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court.

In my further reading of section 38, cited above, I have not seen a requirement to attach certified copies of the judgment and/or decree of the tribunal in appeal originating from the ward tribunal. I am aware that the requirement to attach certified copies of the judgment and decree is a creature of **Order XXXIX Rule 1(2) of the Civil Procure Code, Cap. 33 R.E. 2019 (“the CPC)**. However, the CPC does not apply in matters originating the ward tribunal.

Considering the above submissions, the applicant ought to have filed his petition with the tribunal within the prescribed limit of sixty days. He did not have to wait for certified copies of the judgment and decree. The duty to furnish the records of the ward tribunal and those of the District Land and

Housing Tribunal to the High Court is imposed by law to the District Land and Housing Tribunal, not the applicant. The argument that, the delay in filing the appeal was attributable to the tribunals' failure to supply him with certified copies of the judgment and decree on time is not merited and just a mere afterthought.

There was also an allegation that the applicant did not understand the content of the judgement because it delivered in English and Kiswahili. That argument is founded because by the time the applicant applied for copies of judgment and decree on 31<sup>st</sup> October 2019, two days after the decision, he was aware that he had lost the case. His letter bears a testimony to that because in it the applicant applied for certified copies of the judgment and decree with a view to file an appeal. Furthermore, in terms of section 38 of **the Land Disputes Court Act** (supra) all the applicant was supposed to show is "**good and sufficient cause**" for this Court to extend the time for filing an appeal and not explaining whether he understood the decision or not. he should have filed an appeal and improved the grounds with time, if really that was the argument. This argument also lacks merit.

On another limb the applicant contended that the application should be granted because the intended appeal has abundant chances of success. The position of the law is that, in an application for extension of time the applicant is

supposed to demonstrate that he was precluded from filing the appeal or taking a particular action on time because of some **"good and sufficient cause"** and not that the intended appeal is likely to succeed. I am supported in this view by the decision in the case of In **Wambele Mtumwa Shahame vs Mohamed Hamis** (Civil Reference No.8 Of 2016) [2018] TZCA 39; (06 August 2018 TANZLII) where the Court of appeal cited **Shanti vs. Handocha** (1973) EA 2007 where the East African Court of Appeal made a distinction between an application for extension of time and that for leave to appeal. The said Court stated: -

*"The position of an application for extension of time is entirely different from an application for leave to appeal. He is concerned with showing "sufficient reason" why he should be given more time and the most persuasive reason he can show is that the delay has not been caused or contributed to by dilatory conduct on his part But there may be other reasons and these are all matters of degree. He does not necessarily have to show that his appeal has a reasonable prospects of success or even that he has an arguable case."*

The Court went on to observe that:

***"The notable criteria in applications for extension of time is to show a good cause and not over whelming chances of success. In any case, that would amount to considering the appeal's merits."** [Emphasis mine]*

The argument that the intended appeal intended appeal has abundant chances of success is thus unmerited and it is hereby dismissed.

For the foregoing reasons, I find and hold that the applicant has failed to explain away every day of the delay sufficient to warrant this Court to exercise its discretion in granting the orders sought. I find the application wanting in merits. It stands dismissed.

The respondent shall have her costs.

**Order accordingly.**

**DATED at DAR ES SALAAM this 30<sup>th</sup> day of JULY, 2021.**

A handwritten signature in blue ink, appearing to read "S. M. Kalunde", is written over the printed name.

S. M. KALUNDE

**JUDGE**