

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

MISC. LAND APPLICATION NO. 499 OF 2019

(Originating from the District Land and Housing Tribunal for Kibaha (Hon. Njiwa J,
Chairman) in Land Application No. 50 of 2017)

MELKIOR MATHIAS SILAYO.....	1ST APPLICANT
PROPER SHAYO.....	2ND APPLICANT
GAUDENCE SWAI.....	3RD APPLICANT
PROCHES SHAO.....	4TH APPLICANT
KENEDY SHIRIMA.....	5TH APPLICANT
EVARIST MSHABAHA.....	6TH APPLICANT
DEO L. SILAYO.....	7TH APPLICANT
DEO M. SILAYO.....	8TH APPLICANT
SILAYO GASPA MATHIAS.....	9TH APPLICANT
EDES S. SWAI.....	10TH APPLICANT
BETY M. SILAYO.....	11TH APPLICANT
MAGRETH E. SHIRIMA.....	12TH APPLICANT
ESTA SHILA.....	13TH APPLICANT

VERSUS

AGIRI OMARY SHARIF.....RESPONDENT

Last Order: 09/04/2021

Ruling date: 03/06/2021

R U L I N G

MANGO, J.

The application before me is for extension of time to appeal against the decision of the District Land and Housing Tribunal for Kibaha in Application No. 50 of 2017. The application is by way of chamber summons made under section 42(1) of the Land Disputes Courts Act, [Cap. 216 R.E 2019],

supported by an affidavit sworn by DANIEL BUMA NGASSA advocate for the applicant. The application is vehemently contested by the respondent who filed a counter affidavit to that effect. The applicants had services of Mr. Charles B. Shipande, learned advocate while the respondent prosecuted the application in person.

On 16th November 2020, the court ordered the application to be argued by way of written submissions. According to the affidavit filed in support of this application and the submission made by Mr. Charles B. Shipande, applicant's advocate, the delay in filing the appeal was caused by failure to obtain copies of judgement of the trial tribunal on time. He submitted that, the judgement was delivered on 4th April 2019 but he did not clearly state when the copy of judgement was ready for collection. The applicant counsel is of the view that the reason advanced by the applicant is sufficient to move this court to grant the application as the delay was not caused by any negligence or inaction of the applicant.

In his reply submission the respondent submitted that the applicant did not account for his delay to file the appeal with any sufficient cause. He also argued that the applicant did not make any follow up for the copy of judgement after he filed his letter dated 15th April 2019. He added that, the applicant did not produce any evidence to support his efforts in the alleged follow ups for the copy of judgement.

In his rejoinder the applicants counsel reiterated his submission in chief.

I have considered submissions by both parties and court record. My thorough reading of the pleadings filed in this application I could not find any copy of the judgment subject of this application. The applicants' affidavit indicates that by the time of filing this application they had not yet received the copy of judgement. Even the respondent does not indicate when exactly the said judgement was ready for collection before the tribunal. I had to ascertain from parties as to whether the said copy of the trial tribunal judgement has already been supplied to them or not. The respondent availed this court with the copy of the judgement which indicates that it was certified on 11th March 2020. In his submission, the respondent was computing the period of delay by counting the number of days from the date when the judgement was delivered.

The law section 19(2) of the **Law of Limitations Act**, [Cap.89 R.E 2019] excludes from computation of time limit for appeals, time spent awaiting for copies of judgement intended to be appealed against. Such exclusion is automatic, therefore, the applicant does not need a court order to have the days spent waiting for copy of judgement excluded in computation of time limit for appeal purposes.

It should be noted that supplying a copy of judgement or any court order to the litigants is a matter of right and not a privileged. The trial tribunal ought to have supplied the applicant with the said copy of judgement in time in order to allow the applicants to pursue what they consider to be their right to its finality.

As it is now clear that the copy of judgement subject of this application was ready for collection on 11th March 2020, the application at hand was made prematurely, that is, before the expiry of the time limit for appeals. I am holding so because the application at hand was filed on 4th September 2019 before the applicants obtained the copy of judgement from the District Land and Housing Tribunal for Kibaha. However, the applicants are now time barred to pursue the said appeal because 45 days have already expired from 27th April 2020. It is also not disputed that, the applicants spent the entire period of delay before this court prosecuting the application at hand. In such circumstances, I find it in the interest of justice to grant the application.

The application is hereby granted. The applicant should file their appeal within 21 days from the date of extraction of the drawn order from this ruling. Given circumstances in this application I award no costs.




Z. D. MANGO
JUDGE
03/06/2021