

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO. 395 OF 2021

(Arising from Application No. 46 of 2014 at the District Land and Housing Tribunal for Kilosa District at Kilosa)

BEN E HAULE T/S BSC FAST FOOD & TAKE AWAY APPLICANT

VERSUS

- 1. BENNY L. MAKUNDI**
2. PROPERTY INTERNATIONAL
3. MUNGUATOSHA EZRA KOWERO } **RESPONDENTS**

RULING

Date of Last Order: 11/11/2021 &
Date of Ruling: 03/12/2021

S.M. KALUNDE, J.:

This ruling resolves an application for extension of time to lodge an appeal out of time against the decision of the District Land and Housing Tribunal for Kilosa District at Kilosa (**Hon. R.S. Mnyukwa, Chairperson**) in Application No. 46 of 2014. The application is preferred under sections 19(2), (3) & (5) of **the Law of Limitation Act [Cap. 89 R.E. 2019]** ("the LLA") and section 41(2) of the **Land Disputes Court Act [Cap. 216 R.E. 2019]** ("the LDCA"). The application is supported by an affidavit dully deposed by **Ben Ezekiel**


Haule, the applicant. The application has been counterattacked through a counter affidavit deponed by **Ignas Seti Punge**, the learned counsel for the respondent.

Available materials on record gives the background of this application to the effect that, the applicant and the first respondent allegedly executed a sale of goods agreement. The applicant failed to honor his end of the bargain as a result the first respondent filed a summary suit at Kilosa District Court. The case was allegedly registered as **Civil Case No. 01 of 2013**. The case was heard on merits. The District Court ordered the applicant to pay first respondent Tshs. 30,800,000.00. The applicant failed to comply with the order. The 1st respondent filed an application to execute the decree in Civil Case No. 1 of 2013. That prompted the applicant to file an application before the District Court seeking for *inter alia*, setting aside summary judgment and stay of execution. The application was dismissed.

Subsequently, parties agreed that the applicant would make good of the decree by 30th August, 2018. However, the applicant failed, yet again, to honor his promise. Another arrangement to have the monies paid was agreed. This time parties had an agreement that upon failure to discharge his obligation his assets would be attached. No payments were

made, as a result an attachment process followed resulting into the auction of house SSQT 13 located at Chamvisi Area at Ruaha District ("the disputed property"). Aggrieved by the entire process, the applicant logged **Application No. 46 of 2014** before the District Land and Housing Tribunal for Kilosa District at Kilosa ("the trial tribunal") challenging the auction of the suit property. Upon consideration of tribunal dismissed the applicant's application.

The applicant is aggrieved by the decision of the trial tribunal, being out of time, he preferred the present application. Upon completion of pleadings, leave of the Court was granted for the application to be argued by way of written submissions. Submissions of the applicant were drawn and filed by **Mr. Baraka Lweeka** learned advocate. The respondents retained the services of **Mr. Ignas Punge** in drawing and filing their submissions. The resulting submissions were filed in accordance with the orders of the Court and hence the present ruling.

Having carefully considered the through the substance of the pleadings and submissions filed by both parties, I think the question for my determination is whether the application is merited. 

However, before I delve into determination of the application, I wish to observe that that in accordance with paragraph 8 and 10 of the affidavit, the main ground for delay in lodging the appeal are: *illegality in the decision sought to be challenged and delay in being supplied with copies of the judgment and decree sought to be appealed against.* The respective paragraphs read as follows:

"8. That, the trial tribunal blessed non-existent auction originating from the said civil case no. 1 of 2013 which never existed between parties. Further that **judgment and decree of trial tribunal are tainted with gross illegality.**

9. That, judgment and decree of trial tribunal are necessary to enable applicant to engage legal service and prepare grounds of appeal. Further that applicant herein strived to make follow ups for judgment and decree of trial tribunal whereby the same was certified on 19th July 2021 and issued to him on Friday 23rd July 2021. **Copies of last follow up letter and payment receipt for collecting Judgment & decree are annexed hereto as annexure UJCS" collectively and the leave is craved for the same to form part of this affidavit.**" [Emphasis mine]


I propose to start with the second ground in which Mr. Lweeka contends that delay in filing the appeal was associated with failure in being supplied with certified copies of the judgment and decree of the trial tribunal. In support of the above argument, the counsel submitted that, in accordance with **section 51(1)** of LDCA and **Order XXXIX Rule 1 (1)** of **the Civil Procedure Code [Cap. 33 R.E. 2019]** ("the CPC") a memorandum of appeal must be accompanied by a copy of the judgment and decree sought to be challenged. He added that without being supplied with copies of judgment and decree it was not possible for the applicant to file an informed appeal. To substantiate his point, he cited the decision of this Court in the cases **Deogratias Mulokozi (Administrator of Estates of Charles Rwezaura) vs Brighton Daniel** (Misc. Land Application No. 77 of 2021) [2021] TZHC 6556; (06 October 2021 TANZLII) and **Deogratias Mulokozi (Administrator of Estates of Charles Rwezaura) vs Brighton Daniel** (Misc. Land Application No. 77 of 2021) [2021] TZHC 6556; (06 October 2021 TANZLII).

The counsel reasoned and concluded that delay in filing the appeal was not in his clients' hands.

In response, Mr. Punge argued that was in agreement that the certified copies of the decision sought to be

challenged were made available for collection on the 19th day of July, 2021. He also admitted that in terms of section 19(2) of LLA, the limitation period begun to run from the date of certification of the judgment and decree. He cited the Court of Appeal decision in the cases of **The Registered Trustees of the Marian Faith Healing Centre @Wanamaombi vs The Registered Trustees of the Catholic Church Sumbawanga**, Civil Appeal No. 64 of 2006 (unreported); **Alex Senkoro & Others vs Eliambuya Lyimo** (Criminal Appeal No.16 of 2017) [2021] TZCA 104; (13 April 2021 TANZLII); and the decision of this Court in **Alex Senkoro & Others vs Eliambuya Lyimo** (Criminal Appeal No.16 of 2017) [2021] TZCA 104; (13 April 2021 TANZLII).


Surprisingly, however, the counsel argued that the present application, which was filed on the 02nd day of August, 2021, was out of time and that it was nugatory. In his view the applicant ought to have filed an appeal instead of an application. Owing to the circumstances, the counsel contended that the applicant was not diligent in prosecuting the appeal.

In rejoining, Mr. Lweeka contended that, in terms of section 19(2) of the LLA filing an appeal was not automatic. To support his view, he cited the case of *Tanzindia Assurance* 

Company Limited & Another vs. Richard Augustine Zuberi, Civil Appeal No. 129 of 2019 (Unreported).

Having considered the above rival submissions, I proceed to determine the first point. It is common knowledge that, in terms of section 51(1) of LDCA the CPC is applicable in proceedings before the trial tribunal. It is also not in dispute that, it is a requirement of law under Order XXXIX Rule 1 (1) of the CPC that a memorandum of appeal must be accompanied by a copy of the judgment and decree from which the appeal arise. In appreciation of that, section 19(2) of the LLA requires that the period spent awaiting judgment and decree be excluded. The section reads:

"19(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded." [Emphasis is mine]

The available records are to the effect that the impugned decision was delivered on the 03rd day of May 2021 and copies 

of the decision were certified as being available for collection on the 19th day of July, 2021 and supplied to the applicant on the 23rd day of July, 2021. The present application was subsequently logged on the 02nd day of August, 2021, almost 80 days after the delivery of the decision and barely 12 days from the date the impugned decision was certified. As pointed out above, in terms of section 19(2) of the LLA, the period between the 03rd day of May 2021 when the impugned decision was delivered and 19th day of July, 2021 when copies of the decision were certified as being available for collection ought to be excluded and I hereby do. In that respect, the clock of counting the 45 days outlined under section 41(2) of the LDCA started to run from 19th day of July, 2021. That said, by the 02nd day of August, 2021 when the present application was filed, the applicants were well within the prescribed period to file their appeal. They were just being extra cautious in filing the present application, as argued by Mr. Punge, they would have as well proceeded to file the appeal whilst appending the necessary materials to assist the Court in reckoning key timelines. In the same vein, I do not agree with Mr. Punge that filing the present application amounted to lack of diligence in prosecuting the appeal on the part of the applicant.



For the forgoing reasons, I find no need to indulge into determining the remaining limb of the application. The application is granted. Consequently, the applicant is granted 21 days within which file the intended appeal. The period shall start to run upon obtaining certified copies of this ruling. Given the circumstances in this application, I make no order as to costs.

Order accordingly.

DATED at MOROGORO this 03rd day of DECEMBER, 2021.




S.M. KALUNDE

JUDGE