

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

MISC. LAND APPLICATION NO.6 OF 2019

FRANCIS MTUMBUKA (Personal Representative
of Salvina Emmanuel)**APPLICANT**

VERSUS

DAMIAN SHINE.....**1ST RESPONDENT**
FLORA TARIMO.....**2ND RESPONDENT**
ALFRED MSIMBILA.....**3RD RESPONDENT**
FESTO RWEZAHURA.....**4TH RESPONDENT**
ETI UPUNDA.....**5TH RESPONDENT**

Date of Last Order: 19/03/2021

Date of Ruling: 23/04/2021

R U L I N G

MANGO, J.

The Applicant seeks extension of time to appeal against the decision of the District Land and Housing Tribunal for Ilala in Application No. 348 of 2009. The application is by way of Chamber Summons made under section 41(2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019], Supported by an affidavit sworn by Francis Mtumbuka. The application is contested by the respondents.

The application was argued by way of written submissions. The applicant prosecuted the application in person while the respondent had services of Mr. Deogratius Mwarabu learned advocate. According to the submission and the affidavit sworn in support of this application, the reason that caused the

applicant's delay to file his appeal is failure to obtain copies of judgement and decree on time. According to his affidavit, the judgement of the tribunal was delivered on 15th September 2016. He obtained a copy of judgement on 20th February 2017. He is of the view that, his delay was not caused by any negligence on his part and he prayed to have the application granted.

In his reply submission the respondents counsel submitted that, the applicant failed to account for the entire period of delay with a sufficient cause. According to him the applicant failed to account for the twelve month and seventeen days before filing his previous application and 50 days before filing the application at hand. He argued that the applicants delay was caused by lack of seriousness and negligence on the part of the applicant.

On the issue of waiting for a copy of proceedings from the trial tribunal, the respondents counsel argued that, the same cannot be considered to be a good ground for extension of time because copy of proceedings is not among the essential documents to be attached in instituting an appeal. Citing Court of Appeal decision in **Bharya Engineering and Contracting Co. Ltd Versus Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 he prayed to have the application dismissed for the applicant's failure to establish good reason for the delay.

The law requires the applications for extension of time to be supported by sufficient reason which accounts for the entire period of delay. Failure to obtain copies of judgement has been considered by the courts to be a sufficient cause that can move the court to grant extension of time. However, as submitted by the counsel for the respondents that reason accounts for the period between 15th September 2016 to 20th February 2017. The Application

at hand is a second application after the struck out of the previous application which was filed on 2nd November 2017.

The applicant obtained a copy of judgement from the trial tribunal on 20th February 2017. Unfortunately, the applicant has not accounted for the delay from 20th February 2017 to 2nd October 2017 when he filed his first application. He alleged in para 7 and 8 of his affidavit that, he was waiting to be supplied with a copy of proceedings which as correctly argued by the counsel for the respondents, is not a requisite document for appeal purposes. Even if proceedings will be considered to a necessary document in formulation of grounds of appeal, the same was availed to him on 2nd August 2017. The previous application was filed on 2nd October 2017 as per the contents of Para 10 of the applicant's affidavit. The applicant did not explain what prevented him from appealing or filing an application for extension of time immediately after receiving the copy of proceedings. In such circumstances, I am of a considered view that the applicant has totally failed to account for his two months delay, that is, from 2nd August 2017 to 2nd October 2017.

For that reason I hereby dismiss the application with costs.



Z. D. MANGO
JUDGE
23/04/2021