

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

**MISC. LAND APPLICATION NO.436 OF 2021**

(Arising from the District Land and Housing Tribunal for Temeke at  
Temeke in Land Application No. 83 of 2018)

**EFC TANZANIA MICROFINANCE BANK LTD ..... APPLICANT**

**VERSUS**

**STELLA DANIEL MUNNA ..... 1<sup>ST</sup> RESPONDENT**

**FOCUS B. MBAWALA ..... 2<sup>ND</sup> RESPONDENT**

**SAAD M. SAAD ..... 3<sup>RD</sup> RESPONDENT**

**TANZANIA QUALITY AUCTION MART LTD .....4<sup>TH</sup> RESPONDENT**

**RULING**

*Date of Last Order: 25.10.2021*

*Date of Ruling: 27.10.2021*

**A.Z.MGEYEKWA, J**

The applicant has filed an application for extension of time to appeal against the Judgment of the District Land and Housing Tribunal for

Temeke at Temeke in Land Application No. 83 of 2018. The application was supported by an affidavit sworn by Mr. Ahmed Hassan, the Principal Officer. The first respondent challenged the application by filing a Counter-Affidavit deposed by Ms. Stella Daniel Munna, the first respondent.

When the matter was called for hearing the applicant enjoyed the legal service of Mr. Cleophace James, the first respondent had the legal service of Mr. Robert Mtaiwa, learned counsel assisted Theodorus, learned counsel and the 3<sup>rd</sup> and 4<sup>th</sup> had the legal service of Ms. Shiza Ahamed, learned counsel. The matter proceeded *ex parte* against the 2<sup>nd</sup> respondent.

Mr. Cleophace was the first one to kick the ball rolling. He urged this court to adopt his affidavit to form part of his submission. He stated that the delay to file an appeal out of time is based on two grounds; the applicant delayed to receive copies of Judgment and Decree for appeal purposes and secondly there is a point of law involved.

Submitting on the first limb of the application, the learned counsel for the applicant stated that the applicant delayed receiving copies of judgment hence he found himself out of time to file an appeal before this court. He went on to state that the judgment was delivered on 29<sup>th</sup> June, 2021 and soon after the delivery of the said Judgment, the applicant wrote a letter requesting copies of Judgment and Decree. The learned counsel went on to submit that the District Land and Housing Tribunal received the letter on 13<sup>th</sup> July, 2021 and the copies of judgment were issued on 05<sup>th</sup> August, 2021 and he filed the instant application on 24<sup>th</sup> August, 2021. Mr. Cleoplace added that as per the requirement of the law which requires an application for extension of time be accompanied by the copies of Judgment and Decree of the impugned decision. He went on to submit that the same is required to be filed within 45 days.

It was Mr. Ceophaceo's further submission that the applicant was section 19 (2) of the Law of Limitation Act exclude the time for waiting to obtain the copies for appeal purposes, however, the requirement is not automatic since an applicant is required to seek extension of time to prefer an appeal. He added that time starts to run from the date

when the applicant obtained the said copies. Fortifying his submission he cited the case of **Mayombya Mahugi (the Administrator of Estate of the late Mahugi Nkwambi)**, Land Appeal No. 29 of 2020.

Submitting on the second limb of the application, Mr. Cleoplace argued that there is an issue of illegality stated in paragraph 6 of the applicant's affidavit. He went on to submit that the District Land and Housing Tribunal failed to interpret the scope of spouse consent as far as the mortgage is concerned. He went on to submit that the applicant intends to challenge the said illegality on appeal stage, the learned counsel for the applicant continued to submit that it is a trite law that illegality is a sufficient ground for extension of time when it is raised on the decision been challenged, the court has a duty to extent time even if the applicant has failed to account days of delay. Supporting his position he cited the case of **Principal Secretary Ministry of Defence and National Service v Devram Valambhia** (1991) TLR 387.

On the strength of the above submission, Mr. Cleoplace beckoned upon this court to grant the applicant's application to file an appeal before this court out of time.

In his rebuttal submission, Mr. Hillary took a swipe at the applicant's submission. While praying to adopt the contents of the 3<sup>rd</sup> and 4<sup>th</sup> respondents' counter-affidavit, he held the view that no sufficient reasons had been adduced to justify the delay and that the application has no chances of success. He invited this court to look at the applicant's affidavit and its annexures and find whether there was a genuine delay. He added that counting the days from 29<sup>th</sup> June, 2021 when the judgment was delivered to 05<sup>th</sup> August, 2021 when the copies were delivered it is a delay of 8 days and the applicant has not accounted for the said delay.

The learned counsel for the 1<sup>st</sup> respondent further submitted that the applicant has not explained why he did not comply with the procedure. Mr. Robert referred this court to the provision of law stated under section 19 (2) of the Law of Limitation Act and stated that this section gives lieu to the party who intends to file an appeal, however, it is automatic. To bolster his position he referred this court to the case

of **Valerie McGivern v Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019. The learned counsel for the 1<sup>st</sup> respondent continued to argue that the time is excluded therefore there was no need for the applicant to file an application. Stressing he stated that the applicant was required to explain why he did not file the appeal immediately after being supplied with copies. He went on to submit that ignorance of the law is not an excuse. To support his position he referred this court to the cited case of **Ngao** (supra).

Concerning the ground of illegality, the learned counsel for the 1<sup>st</sup> respondent complained that in order to prove illegality the party must prove that there was a delay. He went on to submit that the issue of spouse consent requires evidence. Insisting, he submitted that a point of law must be patent nor require a long procedure. It was his view that the issue of illegality was not on the face of the record. Mr. Robert valiantly contended that the application is supposed to fail since the applicant has failed to adduce sufficient cause.

In conclusion, the learned counsel for the first respondent beckoned upon this court to dismiss the application for lack of merit with costs.

Ms. Shiza, learned counsel had nothing to submit, she did not object to the application save for costs.

Rejoining, Mr. Cleoplace reiterated his submission in chief and insisted that the time for waiting for copies of judgment and decree are excluded and the same is not automatic the applicant has to apply for extension of time. Stressing, he submitted that after the delivery of the judgment the applicant applied to be supplied with copies of the judgment and ruling. He insisted that the same was beyond the control of the applicant. He contended that the learned counsel for the respondent has submitted the issue of ignorance of the law at bar. He contended that there were no any sloppiness as long as the application was required to be accompanied by the said documents then the application has merit.

With respect to the ground of illegality, he insisted that as long as the applicant has pleaded that there is an issue of illegality then the same must be considered to allow the applicant to challenge the

illegality. In conclusion, the learned counsel for the applicant urged this court to allow the application.

Having heard the contending submissions of the parties, it now behoves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge an appeal to this court. The central issues for consideration and determination are *whether or not the applicant has shown good cause to justify his application*.

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase 'good cause' but the court consistently considers factors such as the length of the delay involved; the reason for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal.



There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v Amos David Kassanda & 2 others**, Civil Application No.48/17/2018 and the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

Similarly, in the case of **Lesero v Mwarabu**, Civil Application No. 10 of 2015 (2016) TZCA 10 the Court held that:-

*"Granting application for extension is a discretionary power. This discretionary power, however, is judicial in nature and must be confined to the rules of the reason and justice..."*

In the instant application, the applicant's Advocate submitted that the application is based on two main grounds; delay to receive copies of judgment and decree and illegality. To resuscitate the applicant's

request for extension of time, the applicant's Advocate submitted that the applicant has adduced sufficient reasons for his delay. On the other hand, Ms. Shiza, learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants conceded to the application while Mr. Robert, learned counsel for the 1<sup>st</sup> respondent opposed the application for the main reason that the applicant has not account for each day of delay and that there is no any illegality in the impugned decision of the District Land Housing Tribunal.

The learned counsel for the applicant and the learned counsel for the 1<sup>st</sup> respondent has been locking horns as to whether in computing the time the period of time requisite for obtaining a copy of decree or order appealed from or sought to be reviewed shall be excluded or not. The applicability of the exclusion is envisaged under section 19 (2) of the Law of Limitation Act Cap. 89 [R.E 2019] the same reads:-

*" 19.-(1) In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded.*

*(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of the judgment, the day on which the judgment complained of was **of the***

***decree or order appealed from or sought to be reviewed, shall be excluded.***” [Emphasis added].

Applying the above provision of law, it is vivid that the day on which the judgment complained or order appealed from, shall be excluded. The issue for determination is whether the period of time requisite for obtaining a copy of the judgment or decree appealed from is automatically excluded or not. The previous position of the law was valid whereas the exclusion was not automatic, the applicant was required to apply for extension of time. However, the said requirement has been changed as stated in the case of **Alex Senkoro and three others v Eliambuya Lyimo (As administrator of the Estate of Frederick Lyimo, Deceased)**, Civil Appeal No.16 of 2017, the Court of Appeal of Tanzania held that that:-

*" We need to stress what we stated in the above case that the exclusion of time is not automatic as long as there is proof on the record of the dates of critical events for the reckoning of the prescribed limitation period. For the purpose of section 19 (2) and (3) of the LLA, these dates are the dates of the impugned decision,*

*the date on which a copy of the decree or judgment was requested and the date of the supply of the requested document.”*

Applying the above authority in the application at hand, it is vivid that the exclusion is automatic. The statutory limitation period of 45 days started to run from the date when the applicant received the said copies on 05<sup>th</sup> August, 2021. Therefore, the applicant was not required to apply for extension of time. In counting the days from when the judgment was delivered on 29<sup>th</sup> June, 2021 to the date when the applicant received the said copies on 05<sup>th</sup> August, 2021, approximately 80 days lapsed. In excluding the days to obtain the copies, the 45 days was ending on 12<sup>th</sup> August, 2021, the applicant filed his application on 24<sup>th</sup> August, 2021. Therefore he was required to account for the delay of approximately 12 days.

It is a trite law that if a delay is involved then the applicant is required to show good cause which includes the reasons for the delay and to account for each day of delay. The same was held in the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019 and the case of

**Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) which had held that:-

*"Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."*

Applying the above authority, I find that the appellant failed to account for each day of delay.

The applicant also raised the issue of illegality in paragraph 6 of the applicant's affidavit and the applicant's Advocate submission. The appellant's gravamen of the complaint is that the District Land and Housing Tribunal decision was a product of illegality. He lamented that the Chairman held that the 1<sup>st</sup> respondent did not sign the spouse consent while he signed it on 20<sup>th</sup> July, 2016 and that signature of the 1<sup>st</sup> respondent is not the same. The respondent's Advocate strongly argued that the issue of illegality cannot stand because it is not on the face of the record. The illegality is no face of the record contrary to what was decided in the case of NGAO illegality. The issue raised is based on exhibits that formed part of the Chairman's decision. In the case of **The Commissioner of Transport v The Attorney General**

**of Uganda and Another** [1959] E.A 329, the Court of Appeal held that:-

*" In other words, the Court refused to extend time because the point of law at issue was not of sufficient importance to justify the extension. **The corollary of that is that in some cases a point of law may be of sufficient importance to warrant extension of time while in others it may not.**" [Emphasis added].*

Riding on the wisdom sprinkled from the cited decisions, the next point for determination is whether the application from which this appeal arises reveals any illegality and, if so, whether such illegality was of grave importance. After taking into consideration what has been stated in the affidavit and the applicant's Advocate submission. My hastened reaction to this question is positive. This court will have a chance to determine whether the spouse's consent was proper in the eyes of the law or not. Thus, this point of law is one of sufficient importance.

Applying the above authority, I find that each case has to be determined on its own merit and all pertinent circumstances must be

considered. Granting the same will not prejudice the respondents. Therefore, in my view and circumstances of this case, the raised illegality amounts to sufficient ground for extension of time.

The upshot of the above, I proceed to allow the application. The applicant to file the intended appeal within 30 days from today. No order as to the costs.

Order accordingly.

Dated at Dar es Salaam on this 27<sup>th</sup> October, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

27.10.2021

Ruling delivered on 27<sup>th</sup> October, 2021 in the presence of Ms. Shiza, learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents and in the absence of the applicant, 1<sup>st</sup> and 2<sup>nd</sup> respondents.



  
A.Z.MGEYEKWA

**JUDGE**

27.10.2021