

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO. 42 OF 2022

ALPHA E.BISIMBA.....APPLICANT

VERSUS

ENOCK NYANGE.....1ST RESPONDENT

JOSEPH M.KINABO.....2ND RESPONDENT

RULING

18.08.2022 & 18.08.2022

Masoud J.

This application for extension of time by the applicant was not opposed by the first respondent. It proceeded *ex parte* against the 2nd respondent who despite being served through substituted service could not enter appearance or file any counter affidavit in opposition.

On the record therefore, there is affidavit of the applicant in support of the application which, at the *ex parte* hearing of the application, was adopted by Mr. Frank Mposso, counsel for the applicant, to form part of his submission in support of the application. The learned counsel further expounded on the reasons why this application should be granted by having the court exercising its discretion in granting the extension sought.

The main reason is the delay in having the copies of the decree and Judgment supplied to the applicant. I was shown that as the decree of the judgment sought to be appealed from was not availed and could not be accompanied with the memorandum of appeal, the applicant could not in the circumstances lodge his appeal.

I was also shown that the judgment sought to be appealed against was delivered on 23/11/2021, the applicant applied to be supplied with the certified copies of the decree and the judgment on 24/11/2021, a day after the delivery of the judgment, and regrettably, the said copies were availed on 31/1/2022 after several followups.

The applicant's counsel relied on **Yusufu Same and Another Vs. Hadija Yusufu Civil Appeal No. 1 of 2002** in showing the court that it is in the discretion of the court to grant or refuse extension sought, and that what amount to sufficient cause for granting extension has not been defined as it depends on the circumstances of each case.

It is on the record that the application was filed on 08/02/2022, just seven (7) days after obtaining copies of the decree and the judgment. It is also

on the record that the affidavit supporting the application has the copy of the letter requesting the copies of the judgment and decree as one of its annexures, having also in its contents the reason and circumstances reflecting the submissions of the learned counsel in support of the application.


All considered, I am satisfied that the applicant has furnished materials warranting this court to consider exercising its discretion in favour of extension sought.

In the upshot, the application is meritorious and is accordingly granted. The applicant should file his appeal within the time prescribed by the law as from the date of this ruling.

In the circumstances, I make no order as to costs.

It is so ordered.

Dated and Delivered at Dar es Salaam this 18th day of August 2022.


B.S. Masoud

Judge

