

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 315 OF 2022**

*(Arising from decision of the District Land and Housing Tribunal for Ilala in Application No. 133 of 2021 Hon. A. R. Kirumbi- Chairperson dated 14<sup>th</sup> March, 2022)*

**ABEL ZEBEDAYO MARKO.....APPLICANT**

**VERSUS**

**THERESIA DAMIANI ECHELA (*Administratrix of the estate of the late HAMIS RASHID MDUDUMA*) .....RESPONDENT**


*Date of last order: 12/9/2022*

*Date of ruling: 26/9/2022*

**RULING**

**A. MSAFIRI, J.**

On the 15<sup>th</sup> day of June 2022, the applicant lodged an application in this Court by way of chamber summons under Section 41(2) of the Land Disputes Courts Act [CPA 216 R.E 2019], for the following orders;

- i. *That this Honourable Court be pleased to issue an extension of time to file an appeal out of time originating from decision of the District Land and* 

*Housing Tribunal at Ilala vide application No. 133 of 2021.*

- ii. *The costs of the application are provided*
- iii. *Any other relief(s) as the Honourable Court may deem fit to grant.*

The application has been taken at the instance of the applicant and is supported by an affidavit sworn by the applicant himself.

Parties to the present application had no legal representation hence this Court on 6/7/2022 ordered the application be disposed of by written submissions, the order which was complied with by the parties herein hence this ruling.

It is gathered from the record of this application that, the respondent herein instituted Land Application No. 133 of 2021 before the District Land and Housing Tribunal for Ilala at Ilala against the applicant herein and 11 others who are not parties to the present application. The respondent was to be a lawful owner of a piece of land situated at Msongola within Ilala Municipality.

After hearing the parties the respondent's claim succeeded partly as among the respondents she had sued she was able to prove her claims

*Alls*

against the applicant herein and the Registered Trustees of Free Pentecostal Church of Tanzania (the 8<sup>th</sup> respondent).

The applicant was aggrieved with the judgment and decree of the trial Tribunal hence he intended to challenge the same but as for the reason that he was not supplied with copies of judgment and decree timely he preferred the present application as stated before. In the affidavit in support of the application as well as written submission by the applicant the sole reason advanced by him to convince the Court to grant him an extension of time is that he was not supplied timely with copies of judgment.

According to the applicant it is contended that after delivery of the judgment by the trial Tribunal they wrote a letter on 14<sup>th</sup> March 2022 requesting for the said copy of judgment which was not supplied to him in time until 19<sup>th</sup> May 2022 when the same was supplied to him. In submission the applicant has urged me to grant him an extension of time so that his right to appeal guaranteed under Article 13 (6) (e) of the Constitution can be exercised.

On reply, the respondent opposed the application maintaining that no reason has been advanced by the applicant to have the court exercise its

*Acting*

discretion for extension of time. In order for the court to grant an extension of time there must be sufficient reasons, the respondent submitted. To fortify her stance on the need to show sufficient reason, the respondent has referred to me the decision in **Kalunga and Company Advocates v National Bank of Commerce** [2006] TLR 235.

The respondent contended further that the applicant has failed to account for each day of delay since the judgment was pronounced on 14<sup>th</sup> March 2022. The respondent has contended further that it is not mandatory to attach the copy of the judgment sought to be appealed against but the applicant could seek for perusal of the file and prepare the appeal.

The applicant opted not to file rejoinder.

Having gone through the submissions of the parties, rival and in support of the application, the sole issue which calls for the Court's determination is whether the application has merit.

As rightly submitted by the respondent together with the authorities she has referred to, for application of extension of time like the present one, sufficient reason(s) must be shown before the court can exercise its

*Alls*

discretion for extension of time. What constitutes sufficient reason depends of the circumstance of each case.

In the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women Christian Associations**, Civil Application No. 2 of 2010 (unreported), several factors to be considered before the court can exercise its discretion of time are; *the need to account for the period of delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take and if the court feels there are other sufficient reasons such as existence of the point of law of sufficient importance such as the illegality of the decision sought to be challenged.*

Applying the above requirements to the present application, it is not in dispute that the judgment sought to be challenged was delivered on 14 March 2022 and the same was certified on 6<sup>th</sup> May 2022. The sole reason advanced by the applicant is that he was waiting for the copy of judgment and decree which was later supplied to him on 19<sup>th</sup> May 2022 as stated under paragraph 9 of his affidavit. *Alle*

The applicant submitted that a letter requesting for the copy of the judgment was lodged in the trial Tribunal on 14/3/2022. I have visited the said letter but the same was written by Pili Rajabu but it has not been indicated whether she was acting on behalf of the applicant herein. Reading through the said letter the said Pili Rajabu wrote it personally and she was in need of the said copy for her own needs.

It is for that reason I am of the firm view that the applicant never requested for the said copy of judgment sought to be appealed against. I must state that, there is an automatic exclusion of the period within which one awaits for the copy of judgment and decree sought to be appealed against. Hence no doubt that it is a sufficient reason as clearly provided for under Section 19 of the Law of Limitation Act [CAP 89 R.E 2019]. The said provision excludes time during which one applied for copies of judgment and decree.

Although the period for obtaining copies of judgment and decree is automatically excluded but for one to benefit from such exclusion it has to be proved that indeed there was a letter requesting for the copies of judgment. See the decision of Court of Appeal in **Alex Sonkoro & 3 others v Elia Mbuya Lyimo**, Civil Appeal No. 16 of 2017 (unreported).

In the referred decision it was succinctly stated by the Court of Appeal that;

*We need to stress what we stated in the above case that **the exclusion is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period. For the purpose of Section 19 (2) and (3) of LLA these dates are the date 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.** [Emphasis added].*

So the applicant was required to show that he took action by requesting in time the copies of judgment and decree of the trial Tribunal. But there is no such letter which indicates that the applicant indeed had requested for such copy.

The respondent has raised a very interesting point that it is not necessary for the copies of judgment to be attached for an appeal arising from the District Tribunals. While I entirely agree with the respondent that

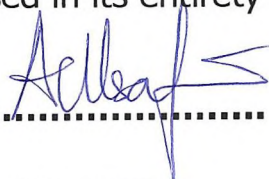
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the law is silent as to whether an appeal arising from the District Tribunals in the exercise of their respective original jurisdictions should be accompanied by a copy of the judgment sought to be appealed against, still I am of the firm view that for one to properly raise grounds of appeal he must have the copy of judgment with him so he can properly prepare his appeal.

Again the respondent was of the view that the applicant could peruse the file of the trial Tribunal and prepare the grounds of appeal. This argument I find to be persuasive and surely it can be exhausted by an aggrieved party rather than waiting for a copy of judgment which in most cases can be issued after the period for appealing has expired.

In upshot and for the foregoing reasons I hold that the application lacks merits and it is hereby dismissed in its entirety with costs.





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**A. MSAFIRI,**  
**JUDGE**  
**26/9/2022**