

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 321 OF 2022

(Arising from decision of the District Land and Housing Tribunal for Kinondoni in Land Application No. 715 of 2018 Hon. C. P. Kamugisha - Chairperson dated 19th November, 2021)

SALMA AMRI MPALAMSI.....APPLICANT

VERSUS

AWADHI ALLY.....1ST RESPONDENT

HUSNA RASHIDI.....2ND RESPONDENT

Date of last order: 9/8/2022

Date of ruling: 30/9/2022

RULING

A. MSAFIRI, J.

On the 20th day of June 2022, the applicant lodged an application in this Court by way of chamber summons under Section 38(1) of the Land Disputes Courts Act [CPA 216 R.E 2019](the Act), for the following orders;

i. *That this Court be pleased to enlarge time for the applicant to file appeal.*

ii. *Costs of this application be provided for* *Adelle*

- iii. *Any other relief(s) that this Honourable Court deems fit to grant.*

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

The applicant appeared through Ms. Enid Makame, learned advocate whereas the respondents appeared in person they had no legal representation. On 6/9/2022 this Court ordered the application be disposed of by written submissions the order which was complied with by the applicant and the 1st respondent. The 2nd respondent did not file any reply submission.

It is gathered from the record of this application that, the applicant instituted Land Application No. 715 of 2018 against the respondents before the District Land and Housing Tribunal for Kinondoni. The applicant was praying for assortment of reliefs including that she be declared to be a lawful owner of a house situated at Kwembe-Mpakani within Ubungo Municipality.

After hearing the parties the applicant's application was dismissed with costs for lack of merits. The applicant being aggrieved, she intended

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to challenge the decision of the trial Tribunal. Initially the applicant lodged an application for extension of time which was registered as Misc. Application No. 160 of 2022 in this Court. According to the applicant the said application was struck out on the date it was fixed for hearing for wrong citation of enabling provision of the law. Hence she lodged the present application.

In the affidavit in support of the application as well as written submission by the applicant, the sole reason advanced by her to convince the Court to grant her an extension of time is that she 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 on 19th November 2021 she wrote a letter requesting for the said copy of judgment but it was until on 29th March 2022 when the same was supplied to her.

On reply, the 1st respondent did not oppose the application. He contended that the reason advanced by the applicant is sufficient hence the court should grant her an extension of time. *Adle*

Having gone through the applicant's submission in support of the application at hand, the sole issue that calls for court's determination is whether the application has merits.

Before going to the merits or otherwise of the application at hand, it is imperative to address one fundamental point. The present application has been preferred under Section 38 (1) of the Act. The said provision gives powers to this Court to grant an extension of time from the decision arising from the District Land and Housing Tribunal in the exercise of revisional or appellate jurisdiction. It does not give powers to the Court to extend time for appealing against the decision of the District Land and Housing Tribunal in the exercise of its original jurisdiction.

In the matter at hand the District Land and Housing Tribunal was exercising its original jurisdiction hence the applicable provision of the law for extension of time ought to have been Section 41 (2) of the Act. No doubt the application has been preferred under wrong provision of the law. The issue is whether an application preferred under wrong provision of the law is rendered incompetent. The position as it was before, any application preferred under the wrong provision of the law as this application was rendered incompetent.

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In the decision of the Court of Appeal in **Almas Iddie Mwinyi v National Bank of Commerce and Mrs Ngeme Mbita** [2001] TLR 83.

In which it was held;

(i) As a wrong citation of law renders an application incompetent, non-citation of the law is worse and equally renders an application incompetent.

But with the inception of the overriding objective into our laws, an application preferred under an incorrect provision of the law, is not rendered incompetent provided that jurisdiction to entertain the application exists. In the present matter this Court has jurisdiction to entertain the present application. Hence I will proceed to determine the merits of the application.

Although the application has not been contested by the respondents, still whether to grant this application or not is discretion of the Court which can be exercised upon applicant showing sufficient cause. What constitutes sufficient reason depends on 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*

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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 sufficient of 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 19th November 2021. The sole reason advanced by the applicant is that she was waiting for the copy of judgment and decree which was later supplied to her on 19th March 2022 as stated under paragraph 6 of her affidavit.

The applicant submitted that a letter requesting for the copy of the judgment was lodged in the trial Tribunal on the same date the impugned judgment was delivered. Later she lodged in Court her first Application No. 160 of 2022 but the same was struck out on 1st June 2022 for being preferred under wrong enabling provision of the law.

A carefully scrutiny on the matter at hand, starting with the claim of being late supplied with copy of judgment, I am aware that time taken to make follow up of the copy of judgment or order appealed against is

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automatically excluded as provided for under Section 19 (2) of the Law of Limitation Act [CAP 89 R.E 2019]. The said provision reads;

(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.

Although there is an automatic exclusion of time still the applicant must show the date on which the copy was requested, when the same was supplied and action taken immediately after being supplied with the said copy. In the case of **Alex Sonkoro & 3 others v Elia Mbuya Lyimo** Civil Appeal No. 16 of 2017 Court of Appeal of Tanzania (unreported) it was succinctly stated 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*

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*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].*

In the instant application the applicant contended that she requested the copy of the judgment on 19/11/2021 and a letter to the effect has been attached but it has not indicated whether the said letter was lodged before the trial Tribunal. Equally the applicant has maintained that the said copy of judgment was supplied to her on 29th March 2022. However, there is no proof that the said copy was supplied to the applicant on that date by producing exchequer receipt evidencing that she received the said copy on 29th March 2022 taking into consideration that judgments or orders of Tribunals are issued after payment of requisite fee. Hence the applicant cannot benefit on the exclusion of time provided for under Section 19 (2) of the Law of Limitation Act.

Equally in the present application the applicant admits that she lodged her first application which was registered as Application No. 160 of 2022 but the same was struck out on 1st June 2022. The present

application was filed in court on 20/6/2022 hence there was a lapse of about 19 days between the date the former application was struck out and when the present application was lodged.

The applicant was therefore required to account on each day lapsed before the court can exercise its discretion for extension of time. The court has insisted on a number of decisions on the need to account on each day of the delay. See for instance **Ludger Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 and **Mpoki Lutengano Mwakabuta v. Jane Jonathan** (*As Legal Representative of the Late Simon Mperasoka- Deceased*), Civil Application No. 566/01 of 2018 (both unreported). As for instance, in the former case the Court stated thus:

"It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application"

As the period of 19 days has not been accounted and taking into account the fact the applicant did not satisfy the court on when she requested the copy of the judgment and when the same was supplied to

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her, I hold that the application lacks merits and I proceed to dismiss it with costs for lack of merits.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written in a cursive style and is positioned above a horizontal dotted line.

A. MSAFIRI,
JUDGE
30/9/2022