

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 380 OF 2022

HENRY LUIS CURPANEN..... APPLICANT

VERSUS

TANZANIA HIGHER LEARNING INSTITUTION

TRADE UNION/DAR ES SALAAM UNIVERSITY

COLLEGE OF EDUCATION (THIT/DUCE).....RESPONDENT

RULING

Date of last Order: 12/10/2022

Date of Ruling: 21/10/2022

A. MSAFIRI, J.

The applicant Henry Luis Curpanen seek to be granted an order for extension of time to file an appeal out of time against the judgment of the District and Land Housing Tribunal of Temeke (trial Tribunal) in Application No. 285 of 2013. The application is supported by an affidavit of Respicius Ishengoma, advocate of the applicant.

Attached with the said affidavit is the affidavit of Henry Luis Francis but the same was never registered in Court nor was it attached as annexure *Alls.*

of the affidavit of Respicius Ishengoma, so it cannot be relied upon as it does not form part of the court records.

The respondent filed a counter affidavit opposing this application.

The application was heard orally and the applicant was represented by Mr. Respicius Ishengoma, learned advocate, whereas Ms. Neema Masame, learned advocate appeared for the respondent.

Mr. Ishengoma started his submissions by praying to adopt the contents of the affidavit. He stated that the impugned judgment was delivered on 29/12/2021 and was certified on 31/12/2021. On 10/1/2022, the applicant submitted a request letter for copies of ruling and decree which was received by the trial Tribunal on 11/1/2022. He averred that, for unknown reasons, the requested documents were not issued by the trial Tribunal.

Mr. Ishengoma stated that he also wrote a letter to the Tribunal requesting for the said copies which was received by the Tribunal on 24/2/2022. But the requested copies were not issued until 23/6/22. That on the very date, i.e. 23/6/22, the senior advocate of Mr. Ishengoma's firm, one Yusuph Kashmir passed away, so Mr. Ishengoma and other counsels at

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BIN Attorneys were fully engaged in the funeral, and it was until 27/6/2022 when the present application was filed.

He referred this Court to the case of **Amour Habib Salim vs. Hussein Bafagi**, Civil Application No. 52 of 2009, CAT (unreported), where it was held that extension of time can be granted where there are special circumstances. He argued that, the present application is under special circumstances and prayed for this Court to grant an extension of time as there was no reason why the trial Tribunal withheld copies of judgment and decree.

On reply, Ms. Masame adopted the counter affidavit of Joster Lameck Mzilano, the Secretary General of the respondent.

She submitted that, on 29/12/2021 the judgment was delivered in presence of the parties, Joster Lameck Mzilano for the respondent, and Luis Francis, a legal representative of the applicant, so the applicant was aware of the judgment.

That, as per affidavit, one Henry Luis Francis wrote a letter to the trial Tribunal on 10/1/2022, but the copy attached does not show clearly when *Adls*.

the same was received by the Tribunal, and it shows that the letter was written by Henry Luis Curpanen.

The counsel for the respondent argued further that, Mr. Ishengoma's claims at paragraph 9 of his affidavit that one Henry Luis Francis was told that the copies of judgment will be available after 35 days are mere words and are not supported by any evidence from the trial Tribunal.

She pointed that, the impugned judgment was certified on 31/12/2021 which means that the same was ready for collection on 31/12/2021. She pointed further that, the letter by the counsel for the applicant was written on 31/1/2022 and received by Tribunal on 24/2/2022 and that is when the Tribunal was made aware of the applicant's request for copies of judgment and decree. She stated that, counting from 29/12/2021 to 24/2/2022, the mandatory 45 days has already expired. She said that, the applicant has not shown any evidence to prove that the judgment was availed to them on 26/6/2022.

She argued that the applicant has not shown any reason for delay and has not counted for each day of delay. *Aells*

On the cited case by the counsel for the applicant, she stated that the case is distinguishable because in the present application there is no special circumstances for the Court to use its discretion and grant the extension of time. She prayed that this application should not be granted.

On rejoinder, the counsel for the applicant practically reiterated his submissions in chief and prayers.

Having considered the rival submissions from both parties, the issue for determination is whether the applicant has adduced sufficient reasons to warrant extension of time to file an appeal out of time. It is trite law that in an application for extension of time, like present one, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time. (See the decisions in the cases of **Benedict Mumello vs. Bank of Tanzania** (2006) IEA 227 (CAT), **Abdallah Salanga & 63 others vs. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application No. 4 of 2014 (unreported).

From the affidavit supporting the application and oral submissions by Mr. Ishengoma, the cause of delay was delay in getting copies of the *Acts*.

impugned judgment and decree. The applicant claims that, the copies were requested by a letter of the applicant dated 10/01/2022, and it was not until 23/6/2022 when the same were availed to them.

I am aware that time taken to make follow up of the copy of judgment or order intended to be appealed against is automatically excluded as provided under section 19(2) of the Law of Limitation Act, Cap 89 R.E 2019 which provides thus;

"19(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 decree or order appealed 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 after supply.

In the case of **Alex Sonkoro & 3 others vs. Elia Mbuya Lyimo**, Civil Appeal No. 16 of 2017, CAT (unreported), it was held that;

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*"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).

In the application at hand, the applicant contended that the copy of judgment was requested on 10/01/2022 and a letter to that effect has been attached. The applicant through his advocate, claim that the letter was received by the trial Tribunal on 11/1/2022. However, the official stamp of the Tribunal does not show clearly the date on which the letter was received.

Equally, the counsel for the applicant maintained that the copies were availed to them on 23/6/2022. Again, there is no proof that the said copies were supplied to the applicant on the stated date. The applicant would have produced an exchequer receipt from the Tribunal evidencing that the copies were received on 23/6/2022 taking into consideration that Judgments or Orders of Tribunal are issued after payment of requisite fee. *Alle*

In the affidavit of Respicius Ishengoma, it is stated that, when the applicant presented a requesting letter to the Tribunal, he was told that the copies will be available after thirty five days thereafter. I agree with the submissions by the counsel for the respondent that these claims by the applicant are mere words with no proof so they cannot be regarded by the Court.

In the circumstances, the applicant cannot benefit on the exclusion of time provided for under section 19 (1) of the Law of Limitation Act.

The applicant has stated in the affidavit supporting the application that, in the circumstances the application is not granted, the applicant stands to suffer an irreparable loss. The counsel for the applicant has reiterated this in the oral submissions before the Court. However neither the affidavit nor the oral submission in Court, managed to substantiate on how the applicant will suffer irreparable loss. Similarly, there is no explanation as to how the applicant believes the appeal has overwhelming chances of success.

Furthermore, the counsel for the applicant has submitted that, there are special circumstances in the present application which warrant the extension of time to be granted by the Court. However, I find the cited case

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of **Amour Habib Salim vs. Hussein Bafagi (supra)**, to be distinguishable from the current application for the reason that, in this application, there are no special circumstances. It is my view that the delay in getting copies of the judgment is not special circumstances intended by the Court of Appeal in the above cited case.

Guided by the reasons and authorities herein above, I find that the applicant has not succeeded to adduce sufficient reasons for delay to file an appeal within time and I therefore dismiss the application with costs.

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 dashed line.

A. MSAFIRI
JUDGE
21/10/2022