

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 311 OF 2022**

*(Arising from Application No. 127 of 2014 District Land and Housing Tribunal for Ilala  
Hon. Mgulambwa-Chairperson dated 29<sup>th</sup> November 2021)*

**EFC TANZANIA MICROFINANCE BANK LTD.....1<sup>ST</sup> APPLICANT**

**MBOGO AUCTION MART & REAL AGENCY**

**CO. LTD DEBT STAR & AUCTIONEERS..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**LUCY DIU SIMTOWE.....1<sup>ST</sup> RESPONDENT**

**WATSON MANDA SIMTOWE.....2<sup>ND</sup> RESPONDENT**

*Date of last order: 26/10/2022*

*Date of ruling: 28/10/2022*

**RULING**

**A. MSAFIRI, J.**

On 13<sup>th</sup> June 2022 the applicant lodged the present application by way of chamber summons under Section 41(2) of the Land Disputes Courts Act [Cap 216 R.E 2019] (the Act). Essentially the applicant prays for an order of the court for extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Ilala (the trial Tribunal) delivered on 29<sup>th</sup> November 2021.

*Adls.*

The application has been taken at the instance of the legal department of Mwanga Hakika Microfinance Ltd and it is supported by the affidavit deposed by Adam Kessy, the Principal Officer of the applicant.

The applicants and respondents were represented by Messrs Stephen Mayombo and Nehemia Nkoko learned advocates respectively.

On 20<sup>th</sup> September 2022, I ordered the application be disposed of by way of written submissions whereby the applicants were to file their submission in chief on or before 26<sup>th</sup> September 2022. The respondents were required to lodge their reply submission on or before 3<sup>rd</sup> October 2022. The submission by the applicants was lodged timely but there was no reply submissions by the respondents despite the fact that on 20<sup>th</sup> September 2022 the respondents appeared through Mr. Stephen Mayombo who held brief for Mr. Nehemia Nkoko, learned advocate.

It follows therefore that the determination of the application at hand will base on the applicants' submissions only.

In their submissions, the applicants have contended that they have advanced sufficient grounds hence the court should grant an order for extension of time. The applicants submitted further that immediately after the judgment of the trial Tribunal was delivered, the applicants wrote a letter requesting for a copy of the decision on 1<sup>st</sup> December 2021 but after several follow ups the copy of the decision had not been availed to the applicants.

*Aells.*

The applicants contended further that it was until 17<sup>th</sup> May 2022 when the copy of the decision was supplied to the applicants. It was submitted further that by the time the applicants were availed with the copy of impugned decision, time prescribed for appealing has already expired hence they had to file the present application for extension of time.

On further submission by the applicants, the decision sought to be appealed against is tainted with illegality on the face of record as the learned trial Chairperson did not consider the opinion of assessors as required by the law. According to the applicants, illegality is a sufficient ground for extension of time. To fortify their stance the applicants have referred the decision of **Metro Petroleum Tanzania Limited & others v United Bank of Africa**, Civil Appeal No. 147 of 2019 (unreported).

The applicants therefore urged me to grant an extension of time because they have advanced sufficient grounds.

Having gone through the applicants' submission in support of the application at hand the sole issue that calls for my determination is whether the application has merits.

The present application has been preferred under Section 41 (2) of the Act. The said provision reads;

*An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:*

*Provided that, the High Court may, **for the good cause**, extend the time for filing an appeal either before or after*

*Alle.*

*the expiration of such period of forty five days.* [Emphasis added]

From the foregoing provision of the law, for the court to exercise its discretion for extension of time good cause must be shown. It follows therefore that the applicants are required to demonstrate good cause before the court can grant an extension of time.

However, what constitutes good cause as required under the above cited provision has not been defined. In a number of decisions a number of factors have to be considered. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant.

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 were set to be;

- i. The need to account for the period of delay,*
- ii. The delay should not be inordinate.*
- iii. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take.*
- iv. 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.*

*Acts-*

In the present application there are reasons advanced by the applicants first on being supplied late with the copy of decision sought to be appealed against and second allegation of illegality apparent on the face of the decision sought to be appealed against.

I will start with the explanation that the applicants were supplied late with copy of the decision sought to be appealed against. It settled law that the time within which the copy of the decision is being awaited for is excluded as provided under Section 19(2) of the Law of Limitation Act [CAP 89 R.E 2019], it 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.*

In interpreting the above provision the Court of Appeal of Tanzania in the case of **Alex Sonkoro & 3 others v Elia Mbuya Lyimo** Civil Appeal No. 16 of 2017 (unreported) 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 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].

Going by the above provision as well the decided case it is not in dispute that impugned decision was delivered on 29<sup>th</sup> November 2021 and the applicants took immediate action by requesting the copy of the said decision by lodging a letter which has been annexed to the affidavit.

The letter was lodged at the trial Tribunal on 1/12/2022. Hence I am satisfied that from the date the applicants were supplied with the copy of the decision on 17<sup>th</sup> May 2022 to the date the present application was filed namely 13<sup>th</sup> June 2022 the applicants were still within time to file their intended appeal.

Having determined the 1<sup>st</sup> reason for the delay, I need not consider the allegation of illegality raised by the applicants regarding the assessors' opinion. Hence I find the application to have merits. The applicants should file their intended appeal within **21 days** from the date of this ruling. I make no order as to costs.

It is so ordered.



**A. MSAFIRI**  
**JUDGE**  
**28/10/2022**