

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC LAND APPLICATION NO. 244 OF 2021

*(Arising from Judgment delivered in Land Application No. 04 of 2018 Mkuranga
District Land and Housing Tribunal)*

SAID SALEHE NJECHELE.....APPLICANT

VERSUS

HALUBU OMARI MBULU.....1ST RESPONDENT

ROBATI PETER SEMPENDU.....2ND RESPONDENT

Date of last order: 10/08/2022

Date of Ruling: 04/10/2022

RULING

I. ARUFANI, J

The applicant filed in this court the instant application seeking for an enlargement of time to file appeal in this court out of time to challenge the decision arising from judgment entered in Land Application No. 04 of 2018 of the District Land and Housing Tribunal for Mkuranga District at Mkuranga (henceforth the tribunal) delivered on 1st April, 2021. The application was made under section 41 (1) and (2), of the Courts (Land Disputes Settlements Act) Cap 216 R.E 2019. To the view of this court the proper name of the law upon which the application was supposed to be made is the Land Disputes Courts Act and not the Courts (Land Disputes Settlements Act) which is not in existence.

The application was supported by an affidavit together with supplementary affidavit sworn by the applicant and it was contested by

the counter affidavit sworn by the first respondent. The second respondent did not file any counter affidavit to oppose the application. At the hearing of the application the applicant was represented by Mr. Akiza Rugemarila, learned advocate and while the first respondent was represented by Mr. Ludger Mlelwa, learned advocate, the second respondent appeared in the court in person.

In support of the application the counsel for the applicant told the court it is not disputed that the judgment of the tribunal was delivered on 1st April, 2021 and the application before the court was filed on 26th May 2021 being the delay of 10 days from when the appeal was supposed to be filed in the court. He stated the applicant tried all of his effort to be supplied with copies of the proceedings and judgment of the tribunal so that he can appeal within the time without success. He argued that although the applicant applied for copies of the said documents from the tribunal on 8th April, 2021 but the same was supplied to him on 13th May, 2021 which was after the elapse of forty three days while the appeal was supposed to be filed in the court within forty five days.

He continued to submit that, upon doing some inquiry he discovered this is an historic case which commenced from 2016. He stated to have discovered the case commenced at Mwanadilatu Village council in 2016 whereby the applicant was declared is a lawful owner of the land in

dispute. He stated that, later on the same matter was heard by Mipeko Ward Tribunal in Land Dispute No. 4 of 2016 and later on the same matter was heard by the tribunal in Land Application no. 4 of 2018. He said the decisions given by the mentioned tribunals are in conflict. He stated section 62 of the Land Village Act, Cap 114 define the Village Land Council, Ward Council and District Land and Housing Tribunal are courts.

He stated to have discovered there are some illegalities in the decisions of the mentioned three courts because apart from existence of conflicting decisions but also, although the matter was heard by Village Council and Ward Tribunal it was heard afresh by the tribunal. He stated that, the decision of Mipeko Ward Tribunal did not set aside the decision of Mwanadilatu Village Council. He submitted the applicant delayed to lodge his appeal in this court for ten days is because of waiting to be supplied with copy of proceedings and judgment by the tribunal.

He referred the court to the case of **Furaha Mwaikuka V. Maka Rubeni**, Misc. Civil Application No. 29 of 2020, HC at Mbeya District Registry (unreported) where delay to get a copy of decision and illegalities were taken to be sufficient cause for granting extension of time. He stated the applicant has accounted for every day of the delay as the reason for the delay is delay to get copies of the proceedings and judgment. He also referred the court to the case of **Golden Enock Sichalwe V. Felista**

Acquirine Shirima (As an Administratrix of the Estate of the Late **Paulo Ambrose Asenga**) Misc. Land Application No. 121 of 2020, HC at Mbeya District Registry (unreported) where it was stated a delay to obtain copies of judgment and decree is sufficient reason for granting extension of time.

In reply the counsel for the respondent did not dispute the submission given by the counsel for the applicant that the impugned decision of the tribunal was delivered on 1st April, 2021. He also did not dispute the applicant wrote a letter to the tribunal on 8th April, 2021 requesting for copies of proceedings and judgment. His argument was that, the issue before the court is not about existence of three conflicting decisions of the tribunals but the issue is whether the application for extension of time should be granted or not. He added that, the delay of the applicant to get copies of the sought documents was not caused by the tribunal but the negligence of the applicant himself as he did not make follow up of his letter. Finally, he prayed the decision of the tribunal to be left without being altered.

In his rejoinder the counsel for the applicant reiterated his submission in chief and added that, even the counsel for the respondent has stated in his counter affidavit that the matter originated from Ward Tribunal and at the same time there is a decision of the Village Council which the applicant may execute the same. He submitted the applicant

has managed to account for each day of the delay and prayed the application be granted as it will not cause any miscarriage of justice. He also prayed each party be ordered to bear his own costs.

After going through the submissions from both sides together with what is stated in the chamber summons, its supporting affidavit and the counter affidavit filed in the court by the first respondent the court has found the issue to determine in this application is whether the applicant has shown good cause for being granted extension of time is seeking from this court. The court has framed the above stated issue after seeing section 41 (2) of the Land Disputes Courts Act upon which the present application is made empowers the court to grant extension of time where good cause for granting the sought extension of time has been shown.

The court has found it is also a settled position of the law that, the term "good cause" stated hereinabove is not defined in any statute. However, in determining whether there is a good cause for granting extension of time there are number of factors which have been laid down by our courts in numerous cases. One of the cases where the stated factors were stated is the case of **Jacob Shija V. M/S Regent Food & Drinks Limited & Another** Civil Application No. 440/08 of 2017, CAT At Mwanza (unreported) where it was held that: -

"What amount to good cause cannot be laid by any hard and fast rule but are dependent upon the fact obtaining in each particular case, that is each case will be decided on its own merits of course taking into consideration the question, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been accounted, the reason for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant".

The factors stated in the above quoted case are almost similar to the principles stated in the cases of **Tanga Cement Company Limited** and **Lyamuya Construction Company Limited**, Civil Application No. 2 of 2010 CAT at Arusha (unreported) where some of the principles to be considered in granting extension of time were stated to be as follows: -

"(a) The applicant must account for all the period of delay, (b) The delay should not be inordinate, (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

While being guided by the factors stated in the afore cited cases the court has found the applicant deposed in his affidavit that, the reasons for his delay to appeal within the time prescribed by the law are two. He deposed the first reason is the delayed to be supplied with copies of

proceedings and judgment by the tribunal and the second reason is that the impugned decision of the tribunal is tainted with illegalities.

Starting with the reason of the delay to be supplied with copies of impugned proceedings and judgment of the tribunal, the court has found as rightly argued by the counsel for the applicant and not seriously contested by the counsel for the respondent the position of the law as stated in number of cases including the cases of **Furaha Mwaikuka** and **Golden Enock Sichwale** (supra) cited by the counsel for the applicant is now settled law that delay to be supplied with copies of proceedings and judgment is a sufficient reason for granting extension of time.

The above stated position of the law can be seen in the cases of **Benedicto Mumello V. Bank of Tanzania, Civil Appeal No.12 of 2002**, CAT At Dar es Salaam (unreported) and **Mary Kimaro V. Khalfan Mohamed**, [1995] TLR 202 where the Court of Appeal stated in the case of **Benedicto Mumello** that, delay to be supplied with copies of judgment contributed to the delay to appeal within the prescribed period of time and held the delay was with sufficient cause. It was also held in the case of **Mary Kimaro** (supra) that, a delay to appeal caused by the applicant's delay to get copies of documents to enable her to appeal, constitutes a good cause when it comes to extension of time.

While being guided by the position of the law stated hereinabove the court has found there is no dispute that the decision the applicant intends to appeal against was delivered on 1st April, 2021. The applicant deposed at paragraph 3 of his supplementary affidavit that, after the judgment being delivered, on 8th April, 2021 he wrote a letter to the tribunal seeking to be supplied with copies of proceedings and judgment of the tribunal for appeal purposes. He deposed further at paragraph 4 of the supplementary affidavit that the sought documents were not supplied to him until 13th May, 2021 when forty three days had already elapsed while the appeal ought to be filed in the court within forty five days from the date of delivery of the decision.

The court has found the applicant deposed further at paragraph 5 of the supplementary affidavit that, his delay to appeal within the time was not deliberate and if he was supplied with the sought documents within the time, he would have managed to lodge his appeal in the court within the time prescribed by the law. That being the position of the matter the court has found that, as rightly argued by the counsel for the applicant, the applicant would have not managed to prepare his appeal and filed the same in the court within the two days which had remained for him to lodge his appeal in this court.

The above view of this court is getting support from the case of **The Registered Trustees of Marian Faith Healing Centre @ Wanamaombi V. the Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007, CAT (Unreported) cited in the case of **Valerie Mcgivern V. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019 where it was stated that, the period from when the applicant was waiting for the copies of documents he wanted for appeal purposes is supposed to be excluded in computing limitation of time. The court has considered the argument by the counsel for the first respondent that the applicant's delay to file appeal in the court was caused by his negligence to make follow up of the sought documents but failed to see any negligence committed by the applicant in pursuing his intended appeal.

The court has come to the stated finding after seeing the applicant acted immediately after the judgment being delivered to apply for the copies of proceedings and judgment as he wrote a letter of seeking for the stated documents on 8th April, 2019 which was one week after the delivery of the judgment. The court has found a period of fifteen days passed from when the applicant was supplied with the copies of proceedings and judgment until when the instant application was filed in this court is not inordinate delay which cannot be condoned. The court

has also come to the stated finding after seeing when the Court of Appeal was dealing with the similar issue in the case of **Valerie McGivern** (supra) it stated that: -

"Suffice to say, section 19 (2) of LLA and the holding in the decision cited above (Wanamaombi's case) reinforce the principle that, computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced the appellant obtains a copy of the decree or order appealed by excluding the time spent in obtaining such decree or order. However, it must be understood that section 19 (2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of appeal."

Since the applicant in the present application has clearly stated he requested for the copies of the proceedings and judgment from the tribunal in writing and the same were supplied to him on 13th May, 2021 the period from when the judgment was delivered until when the applicant was supplied with the requested documents is supposed to be excluded from the date of being required to lodge his appeal in the court. If the said days will be excluded it will be found the applicant took 13 days from when he was supplied with the sought documents to lodge the instant application in this court which to the view of this court is not an inordinate delay.

Even if it will be said the stated period of 13 days is inordinate and cannot be condoned but the court has found the applicant has raised another reason of existence of illegalities in the impugned decision of the tribunal. The court has found the stated reason has been accepted in number of cases as sufficient reason for granting extension of time. One of the said cases is the case of **Lyamuya Construction Company Limited** (supra) where it was stated illegality once established is a sufficient ground for granting extension of time. The question to determine here is whether the applicant has managed to establish there is illegality in the impugned decision of the tribunal.

The court has found that, as rightly stated by the counsel for the applicant and as deposed at paragraph 7 of the supplementary affidavit of the applicant, the dispute between the parties started from Mwadilatu Village Council and went to Mipeko Ward Tribunal and thereafter it was taken to the tribunal where it was heard afresh while the decisions of the previous tribunals were still in existence. To the view of this court the stated illegality is a point of law of sufficient importance to grant the applicant extension of time to lodge his appeal in the court out of time to enable the court to determine whether the alleged illegality is in existence and if it is in affirmative to put the record of the matter proper.

It is because of the above stated reasons the court has found the applicant has managed to satisfy it that there are sufficient reasons for granting him extension of time to lodge his appeal in the court out of time. In the premises the application of the applicant is hereby granted and the applicant is given twenty (20) days from today to lodge his intended appeal in the court. Each party to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 4th day of October, 2022



I. Arufani

I. Arufani

Judge

04/10/2022

Court:

Ruling delivered today 04th day of October, 2022 in the presence of Mr. Akiza Rugemarila, learned advocate for the applicant and in the presence of Mr. Ludger Mlelwa, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

I. Arufani

Judge

04/10/2022