

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

MISC. LAND APPLICATION NO. 493 OF 2022

*(Arising from decision of the District Land and Housing Tribunal for Ilala at Ilala in
Misc. Land Application No. 545 of 2020)*

Between

ANTONI KINGAZI..... APPLICANT.

VERSUS

MILKA MAIGARESPONDENT.

RULING

T.N. MWENEGOHA, J.

This application which is made under section 41(2) of the Land Disputes Courts Act, Cap.216 R.E 2019 is seeking for extension of time within which the applicant, can file an appeal out of time. The application is supported by the affidavit of applicant stating the reasons to support the Application.

Upon being served with the Application respondent filed a counter affidavit to counter the same.

The application was heard by way of written submissions and parties were represented. Advocate Adolf Wenceslaus Muhay appeared for the applicant and advocate Greyson Rweyemamu appeared for the respondent.

Submitting in support of the Application Mr. Muhay stated that sometimes

on 08th day of July, 2022 the District Land and Housing Tribunal for Ilala at Ilala delivered its decision in favour of the respondent herein.

That the applicant being aggrieved by the said decision of the Tribunal duly applied for certified copies of proceedings, Judgment and Decree. However, he was not supplied with it in time. Hence a delay in filing the intended appeal.

He stated that the applicant is main reasons for delay is that there has a delay in obtaining copies of Judgment and Decree. He added that the copies of Judgment and Decree were certified on the 18th August, 2022, which was followed by weekend until on the 22nd August, 2022 when the said copies of Judgment and Decree were supplied to the applicant.

It was contention that by the time the Trial Tribunal certified the copies of the said Judgment and Decree and supplied the same to the applicant, the prescribed time for appeal purposes had already lapsed.

In reply Mr. Rweyemamu submitted that from when the copies were supplied to the filing of this Application for extension of time, the applicant was still in time to file an appeal because 45 days had not lapsed yet.

It is his view that the applicant should have filed an appeal instead of application for extension of time.

In reply Mr. Rwechungura is of the view that the said application is unnecessary, as to him a time start to run when a party has received the judgment. He quoted section 19 (2) of the Law of Limitation Act which states; -

"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 complied of was delivered, and the period of time requisite for obtaining a copy of decree or order appealed from or sought to be reviewed, shall be excluded".

In his rejoinder the applicant submitted that the respondent had strongly admitted that the reasons which made the applicant fail to lodge appeal his appeal in time was due to delay in being supplied with necessary copies within time and reiterated his prayers.

I have carefully considered submissions of both parties and I have to determine as to whether the application is meritorious whereby the main reason for delay is that he was not supplied with necessary document within time.

I am in agreement with Mr. Rwechungura with the position of law that when a party was not supplied with the copy of judgment on time such period used to obtain the said copies of judgment are excluded when computing the period of limitation.

I agree with the applicant that the right vested in section 19(2) of the Law of Limitation Act is not automatic.

But the law does not allow a party to arbitrary extend time to file his appeal without first obtaining extension of time. The court will have the duty to allow the said application by excluding that period wasted for obtaining the copy of judgment.

I will refer to the case advance by the applicant, that of **TanESCO vs. Christopher Bitu Makunja, Civil Appeal No. 42 of 2011.**

The applicant has shown that there was a delay in obtaining copies of judgment and decree. This was not denied by the respondent.

Having said that I found that the applicant has valid reasons for extension of time and he is hereby given 21 days to file his appeal.




T.N. MWENEGOHA
JUDGE
31/10/2022