

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 117 OF 2022**

ANNA JOYCE RUHINDA APPLICANT

VERSUS

ADOSTA INVESTMENT COMPANY LIMITED 1ST RESPONDENT

AZANIA BANK LIMITED 2ND RESPONDENT

RULING

Date of Last Order: 18.05.2022

Date of Judgment: 19.05.2022

A.Z. MGEYEKWA, J

This is an application for an extension of time to appeal against the Judgment in Land Case No. 263 of 2019 arising from the District Land and Housing Tribunal for Kinondoni at Mwananyamala before Hon. Kamugisha, Chairman delivered 12th November, 2021.

The applicant lodged this application on 18th March, 2022 before this court under section 41 (2) of the Land Dispute Courts Act, Cap.216 [R.E.

2019]. The application is accompanied by the applicant's affidavit deposed by Anna Joyce Ruhinda, the applicant. The application is strongly opposed by the respondent. Through a counter-affidavit sworn by Mr. Charles Mugila, Principal Officer of the 2nd respondent.

When the matter came for hearing on 18th May, 2022 the applicant was represented by Mr. Vedastus Majula, learned Advocate whereas the 2nd respondent was represented by Mbagati Nyarigo, learned Advocate. Both counsels were ready to proceed. The matter proceeded *ex parte* against the 1st respondent who was duly been served but did not show appearance.

Mr. Vedastus, learned Advocate precisely adopted the applicant's affidavit and prayed before this court to grant an extension of time to appeal against the decision of the District Land and Housing Tribunal in Land Case No. 263 of 2019 delivered on 12th November, 2021.

Mr. Vedastus was the first one to kick the ball rolling. In his submission, Mr. Vedastus acknowledged the fact that the grant of extension of time is conditioned on the applicant showing sufficient reasons. He submitted that the reason for the delay to appeal within the statutory prescribed 45 days was a failure to obtain a copy of the Judgment.

The counsel for the applicant submitted that in the instant application, the applicant requested a copy of the judgment six days after the Judgment delivery, that is on 18th November, 2021, but the same was not supplied to the applicant despite the fact that there were several follow-ups, until on 08th February, 2022 when the copy of Judgment was supplied to the applicant and that after being furnished with the said copy, he lodged the application on 16th March, 2022, which was 36th day from the date of obtaining the copy of Judgment. Thus, it was his submission that the application is within time because, in computing days of delay, the days waiting for copies of Judgment are excluded. The learned counsel drew the Court's attention to the decisions of the Court of Appeal of Tanzania in **Lazaro Mpigachai v R**, Criminal Appeal No. 75 of 2018 (unreported).

In reply, Mr. Nyarigo adopted the counted affidavit deposed by Charles Mungila. Ms. Mashimba was valiantly opposed to the applicant's contention. He took the view that the applicant has to account for even a single day delayed and no good reason for the delay has been advanced for the Court to grant an extension of time. The counsel for the 2nd respondent argued that from the date when the applicant obtained the copy of Judgment on 08th February, 2022 to the date of filing this application on 18th March, 2022 is a lapse of 38 days. Mr. Nyarigo went

on to submit that the days after obtaining the copy of the Judgment must be accounted for. To bolster his position, he cited the case of **Omary R. Ibrahim v Ndege Commercial Services Ltd**, Civil Application No. 83/01/2020.

On the strength of the above submission, the learned counsel for the 2nd respondent insisted that the applicant has miserably failed to account for the days of delay. He urged for this court to dismiss the instant application with costs.

In his rejoinder, the applicant's counsel reiterated his submission in chief. Insisted that the days of delay started to run from the date when the applicant received the copy of the Judgment. He added that the application was lodged electronically on 16th March, 2022 and was admitted on 18th March, 2022. Thus, it was his view that 36 days were accounted for and the same are within 45 days from the date when received the copies.

Having gone through the submission from both sides, it appears that the issue for determination is *whether the applicant has advanced sufficient good cause to be granted the application to appeal out of time.*

It is the legal position is that extension of time, being an equitable discretion, its exercise must be judicious. As stated in numerous

decisions, such discretion is done upon satisfaction by the applicant through a presentation of a credible case upon which such discretion may be exercised. This position was enunciated by the **East African Court of Appeal in Mbogo v Shah** [1968] EA 93, it was held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal, and the degree of prejudice to the defendant if time is extended."

Similarly, the Court of Appeal of Tanzania in the case of **Ngao Godwin Losero K. Julius Mwarabu**, Civil Application 10 of 2015) [2016] TZCA 302 (13 October 2016) held as follows:-

"To begin with, I feel! It is instructive to reiterate, as a matter of general principle that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice."

It is settled law that applications of this nature will only succeed upon the applicant showing good cause for the delay. This is a requirement of section 41 (2) of the Land Disputes Court Act Cap 216 [R.E. 2019] which provides: -

“(2) 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 the expiration of such period of forty-five days.”

The model of computing the days delayed is provided under Section 19(2) of the Law of Limitation Act, Cap 89 [R.E. 2019] which provides: -

*“(2) **In computing** the period of limitation prescribed for an **appeal**, an application for leave to appeal, or an application for review of the 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.**” [Emphasis added].*

Applying the above provision of law in the instant application means that the time for the applicant to lodge an appeal to this court has to be computed from 08th February, 2022 the day when the applicant obtained a copy of the Judgment. And the date from 18th March, 2022 when the applicant lodged the application before this court whereas the application was lodged 39 days after obtaining the copy of Judgment.

The applicant's counsel's sole reason for the delay is that the supply of a copy of the judgment was done belatedly. It was his view that the days of obtaining the said copies are excluded. The argument by Mr. Nyarigo, in opposition to this contention, is binary. One, that the applicant has failed to account for every single day of delay; and two, that the applicant has failed to adduce good cause for his delay.

In the case of **Lazaro Mpigachai v R**, Criminal Appeal No. 75 of 2018, the Court of Appeal among other things ruled out that failure to obtain copies of Judgment is sufficient good cause to be extended. In the case of **Lazaro Mpigachai** (supra), the application that was lodged 20 days after obtaining copies of Judgment was declared to be within time. The statutory period of 45 days started to run from the date when the applicant obtained copies of Judgment and excludes all the period requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed. The Court of Appeal of Tanzania in the case of **Lazaro Mpigachai** (supra) on page 9 held that:-

"The petition of appeal was filed 20 days later, that is, on 7/2/2017, thus, this was also filed on time. In the Circumstances, certainly, the Appeal was within time"

Applying the above authority in the application at hand, it is clear that the application was within time. Thus, the applicant has advanced sufficient cause for his delay.


In the upshot, the instant application is granted and the applicant is allowed to file an appeal within thirty days from today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 19th May, 2022.

A. Z. MGEYEKWA
JUDGE
19.05.2022

Ruling delivered on 19th May, 2022 via audio teleconference whereas, Mr. Vedastus, learned counsel for the applicant and Mr. Nyarigo, learned counsel for the 2nd respondent were remotely present.

A. Z. MGEYEKWA
JUDGE
19.05.2022