

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 234 OF 2021

STELLAH SHEIKH.....APPLICANT

VERSUS

MARIAM SHEIKH.....RESPONDENT

RULING

*12/05/2022 & 30/05/2022*

**Masoud, J.**

The application was brought under section 41(2) of the Land Disputes Courts Act, cap. 216 R.E 2019 by the applicant seeking extension of time within which to file an appeal out of time. The intended appeal is against the decision of the District Land and Housing Tribunal of Ilala in Application No. 51 of 2018.

The application is supported by an affidavit of the applicant which advanced reasons in support of the application. They are to the effect that there was delay in obtaining copy of the judgment of the district tribunal delivered on 05/02/2021; the delay was notwithstanding that

the applicant requested for the said copy on 09/02/2021 as was evidenced by a copy of the said written request annexed to the said affidavit; the said delay saw the applicant being supplied with the copy on 23/04/2021; and that the intended appeal could not be filed within time as the applicant had been waiting for the copy of the judgment.

The application proceeded ex-parte against the respondent. Despite the attempt of having her served personally, the respondent could not be traced. As a result, substituted service was sought and obtained for her to be served by publication in a widely circulating newspaper. The same was effected in Mwananchi Newspaper of 04/02/2022. Despite the substituted service the respondent could still not enter appearance. The matter as a result proceeded for hearing ex-parte as already pointed out.

Being a layperson who was unrepresented although she enjoyed the service of TAWLA in so far as drawing of the application was concerned, she adopted her affidavit as forming part of her submission. Accordingly, she invited the court to grant the reliefs sought in the chamber summons.

Since the application was heard ex-parte, it meant that the whole application was uncontested, so were the reasons advanced in support of the application. The question is whether the reasons were sufficient to warrant granting of the extension. In other words, whether the reasons entitle the court to exercise its discretion in favour of the extension.

The averments in the applicant's affidavit as indicated were supported by a copy of the letter by the applicant dated 09/02/2021 and received by the trial tribunal on the same date requesting to be supplied with a copy of the judgment. The averments were further supported by a copy of the decree of the impugned judgment of 05/02/2021 extracted on 19/04/2021.

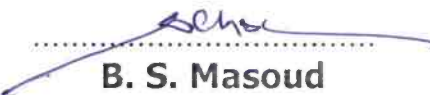
Thus, while the impugned judgment was delivered on 05/02/2021 as per the affidavit, the decree was extracted on 19/04/2022 which is about two and a half months later. This is notwithstanding that the letter requesting for the copy of the judgment and the proceedings was received by the tribunal on 09/02/2022 which is just four days after the delivery of the judgment on 05/02/2022. The said letter was written by TAWLA on behalf of the applicant which could also justifies the four days period as from the delivery of the said judgment. The extraction of the

decree on 19/04/2021 of the judgment delivered on 05/02/2022 by itself explains the delay which undoubtedly saw the application being filed on 21/05/2021 almost a month after the extraction of the decree. On my part the delay in filing the present application on 21/05/2021, and not earlier, has to be considered in the light of the applicant's dependence on legal aid from TAWLA. I am of such view mindful that the application went unopposed as it was heard ex-parte.

In view of the foregoing, I find that the application is meritorious. I would as I hereby do so not decline to exercise my discretion in its favour.

In fine, I would, as I hereby do so, allow the application to file the requisite appeal within the timeline (i.e 45 days) prescribed by the law as from the day of the delivery of this ruling. I make no order as to costs in the circumstances. I order accordingly.

Dated at Dar es Salaam this 30<sup>th</sup> day of May 2022.

  
**B. S. Masoud**  
**Judge**  
**30/05/2022**

