

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

MISC. LAND CASE APPLICATION NO. 297 OF 2021

*(Arising from the judgment of Temeke District Land and Housing Tribunal in
Application No. 158 of 2019 dated 25th February 2021)*

KONDO KIBWANA APPLICANT

VERSUS

ALPHONCE DEUS MZURI RESPONDENT

Date of last Order: 09/05/2022

Date of Ruling: 24/06/2022

RULING.

I. ARUFANI, J

The Applicant, Kondo Kibwana, lodged the instant application in this court praying for extension of time to lodge appeal in this court out of time against the decision of the District Land and Housing Tribunal of Temeke at Temeke in Land Application No. 158 of 2019 dated 25th day of February 2021. The application is made under section 41(2) of the Land Disputes Courts Act, Cap 216, R.E 2019. The application is supported by the affidavit of the applicant and it was opposed by the counter affidavit sworn by the counsel for the respondent namely Shiza Ahmed John.

At the hearing of the application the applicant was represented by Mr. Yuaja Barankiliza, learned advocate and the respondent was

represented by Mr. Robert Kipingili, learned advocate. The court ordered the application be argued by way of written submission and I commend the counsel for the parties to comply with the time given to them. In supporting the application, the counsel for the applicant urged the court to adopt the affidavit of the applicant which he stated it disclosed sufficient reason caused him to delay to file appeal in the court within the time prescribed by the law.

He argued that, the trial tribunal delivered its judgement on 25th February, 2021 and on 9th March, 2021 he applied for the copy of judgment. He stated that although he made several follow up but it was until 6th April, 2021 is when he was supplied with the copy of judgment. He said after being supplied with the copy of judgment he prepared his appeal and brought the same to the court on 8th April, 2021 but he was told he was required to file the same electronically. He said as he was not familiar with electronic filing system he sought for assistance and managed to file his appeal in the court on 12th April, 2021.

He argued that, after filing the appeal in the court he paid the court fees on 13th April, 2021 and when he made follow up of the summons, he found the case had been assigned to Hon. Lyamuya, PRM with Extended Jurisdiction. He said after appearing before the court on 7th June, 2021 it was discovered the exchequer receipt shows the appeal was filed in the

court out of time. He said to have prayed to withdraw the appeal and his prayer was granted.

He said as he was not familiar with the legal procedure for filing application for extension of time, he found a person to assist him to prepare the application at hand. He said to have collected the application from the person assisted him to prepare the same on 16th June, 2021 and on 21st June, 2021 he filed the application at hand in the court.

He submitted that the applicant was delayed by the above stated reasons to file the appeal in the court within the time prescribed by the law. He submitted further that the above stated reasons are strong enough to warrant this court to grant the applicant extension of time to lodge his appeal in the court out of time. At the end he prayed the application be granted with costs.

In rebuttal the counsel for the respondent prayed to adopt the counter affidavit sworn by advocate Shiza Ahmed John who represented the applicant in Land Application No. 158 of 2019. He stated the applicant's application is without merit as the applicant has failed to establish sufficient cause for the court to grant him extension of time is seeking from the court. He argued that, although the applicant is arguing he delayed to be supplied with the copy of the judgment by the trial tribunal but after the judgment being delivered on 25th February, 2021, they were

told the copy of judgment and decree were ready for the parties to request for the same.

He stated that the respondent requested for the copy of judgment on 3rd March, 2021 and managed to get them on 4th March, 2021. He stated after the respondent got the copy of the judgement and the decree, he filed bill of costs in the court on 9th March, 2021. He stated all that shows the applicant is misleading the court by telling wrong facts to obtain leave from the court to file appeal in the court out of time. He stated that although they are aware that extension of time is on discretion of the court but the said discretion must be exercised judiciously.

He submitted that, the applicant failed to secure the judgment earlier due to his sloppiness and negligence as he requested for the copy of judgment by using wrong names of the parties. He said the applicant wrote in his letter the name of **Grace Mukasa V. Kondo Kibwana** instead of **Alphonse Deus Mzuri V. Kondo Kibwana**. He stated that shows the applicant's delay was caused by his own negligence.

He stated that, as the applicant admitted he was supplied with the copy of judgment on 6th April, 2021 it is crystal clear that he was within the time to file appeal in the court as only 40 days had passed while the appeal was supposed to be filed within 45 days. He argued that, instead of filing the appeal in this court he filed the same in the wrong court as

he has admitted in his affidavit and in his submission in chief. He stated that shows his delay was caused by negligence which cannot be used by the court to grant him extension of time.

He submitted the issue to determine in this application is whether the applicant has been able to advance sufficient cause to warrant extension of time to be granted. Although he referred the court to section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2019 but that provision of the law is not applicable in the matter at hand as the provision governing this application is section 41 (2) of the Land Disputes Courts Act. He referred the court to the case of **Daphne Parry V. Murray Alexander Carson** [1963] EA 546 where it was stated that, in interpreting the sufficient cause that court must guard itself from the danger of being led by sympathy to grant the sought extension of time.

He also referred the court to the case of **Bushiri Hassan V. Latifa Lukio Mashayo** where it was stated a delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing periods within which certain steps have to be taken. He also referred the court to the case of **Lyamuya Construction Company Ltd V. Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2010, CAT at Arusha where some

guidelines to be considered by the court when deciding to grant extension of time or not were formulated.

He submitted the applicant has failed to account for all days of the period of the delay and failed to show diligence and not apathy, negligence or sloppiness in prosecuting the intended appeal. Finally, he prayed the court to dismiss the application with costs.

In his rejoinder the counsel for the applicant reiterated his submission in chief and added that, after the applicant being served with the copy of judgment, he managed to file his appeal in the court on 12th April, 2021 when it was within the time but the problem was the receipt of payment of court fees which was issued on 13th April, 2021. He stated it is because of the stated reason the appeal filed in the court by the applicant was withdrawn.

He stated that, the argument by the respondent that he filed a bill of costs in the court has no merit because it is not mandatory to obtain a copy of judgment before filing a bill of costs as the bill of costs is filed in the same file where the judgment was delivered. He prayed the court to find the applicant has established sufficient reason for the delay and he has accounted for each day of the delay and grant him extension of time is seeking from the court.

I have keenly considered the submission from the counsel for the parties and I have also carefully gone through the affidavit and counter affidavit filed in this court by the parties. 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.

It is a settled position of law that the court has discretionary power to grant extension of time upon good cause being shown. It is also a settled position of the law that, 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 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".

While being guided by the position of the law stated hereinabove the court has found the applicant in the application at hand, has deposed in his affidavit and it is also argued in the submission of his advocate that, he delayed to be issued with copy of judgment which cause him to rush in preparing his appeal but ended up in delay on payment of the court fees which caused the appeal he filed in the court at the first instance to be found was out of time. It is stated another reason caused the applicant to delay to file appeal in the court is that he was prosecuting Land Appeal No. 10 of 2021 which was assigned to the Magistrate with extended jurisdiction and later on was withdrawn and the time spent in waiting for the legal assistance to prepare his appeal.

The court has considered the stated reasons and found it is not in dispute that when the applicant was availed with the copy of judgment, he was within the time to file his appeal in the court as it was 40 days which had passed from the day when the judgment was delivered. As pursuant to section 41 (2) of the Land Disputes Courts Act the applicant was required to lodge his appeal in the court within forty five days after the date of delivery of the judgment the applicant had remained with five days to lodge his appeal in the court.

The court has found the applicant deposed at paragraphs 4 and 5 of his affidavit that, after delivery of the judgment he wrote a letter to the

trial tribunal on 9th March, 2021 seeking for the copy of the judgment and the copy was supplied to him on 6th April, 2021. The applicant has deposed further at paragraph 6 of his affidavit that, after being supplied with the copy of judgement he filed land appeal in the court on 12th April, 2021 which was registered as Extended Jurisdiction Land Appeal No. 10 of 2021 but the same was withdrawn form the court on 7th June, 2021.

As after the said first appeal being withdrawn from the court the application at hand was filed in the court on 21st June, 2021 which is almost fourteen days from when the first appeal was withdrawn from the court the court has found the applicant has managed to account for whole period of the delay that he was pursuing for his right in the corridors of the court. The court has considered the argument by the counsel for the respondent that the applicant was negligence as he wrongly applied to be supplied with the copy of judgment of the case of **Grace Mukasa V. Kondo Kibwana** instead of **Alphonse Deus Mzuri V. Kondo Kibwana** but there is nowhere stated he was informed by the trial tribunal about the said error so that he can rectify his letter.

To the view of this court and as rightly argued by the counsel for the applicant writing of the name of Grace Mukasa in his letter of application for copy of judgment of his case instead of Alphonse Deus Mzuri might be a human error which can be committed by any human being and not

necessarily that the applicant was negligent. The court has considered the argument by the counsel for the respondent that the copy of judgment was ready from the date when it was delivered and were told to request for the same and they requested for the copies of judgment and decree on 3rd March, 2021 and were supplied on 4th March, 2021 but found that is not enough to prove the applicant who sought for the copy of the judgment on 9th March, 2021 and supplied with the same on 6th April, 2021 was negligent in delaying to file appeal in the court within the time prescribed by the law.

The court has arrived to the above finding after seeing that, the applicant was not replied his letter of requesting for the copy of judgment and informed, he could have not been supplied with the copy of judgment as he had sought for a copy of judgment of wrong parties. The court has also found it is undisputed that the copy of the impugned judgment was supplied to applicant on 6th April, 2021. That being the position of the matter court has found that, as stated by the Court of Appeal in the cases of **Alex Senkoro & Three Others V. Eliambuya Lyimo**, Civil Appeal No. 16 of 2017, CAT at DSM and **Valeria Mcgiven V. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019, CAT at Tanga (both unreported), the period of time the applicant was waiting to be supplied with the copy of

judgment is supposed to be excluded from the period of lodging appeal in the court.

If the period of time spent by the applicant in waiting to be issued with the copy of impugned judgment is excluded from the period of delay, it will be found the first appeal filed in the court by the applicant on 12th April, 2021 and the court fees paid on 13th April, 2021 was filed in the court well within the time of forty five days provided for filing appeal of the nature of the appeal the applicant filed in the court as the time spent in waiting for the copy of judgment was supposed to be excluded automatically pursuant to section 19 (2) of the Law of Limitation Act, Cap 89 R.E 2019.

As for the time of delay from when the first appeal was filed in the court up to when the appeal was withdrawn from the court on 7th June, 2021, the court has found that period is also required to be excluded from the period of delay on the principle of technical delay laid in the case of **Fortunatus Masha V. William Shija and another** [1997] TLR 154 where it was stated that, as the applicant was pursuing another appeal filed in the court within the time but found to be incompetent, the period he was prosecuting the said appeal is required to be excluded from the period of the delay.

The court has considered the period from when the first appeal was withdrawn from the court until when the present application was filed in the court and find it is not inordinate delay and he has accounted for the same by stating he was waiting for his lawyer to prepare for the application at hand and the time used to lodge the application in the court electronically. The court has considered the argument by the counsel for the respondent that the applicant was negligent in collecting the copy of judgement sooner from the trial tribunal and the impugned copy was ready from when it was pronounced but found as stated in the case of **Valeria Macgiven** (supra) it will be venturing on speculation to rely on assumption that, as the judgment was certified on 25th February, 2021 when it was delivered, then failure to obtain the requisite document on that date or sooner than when it was supplied to him is negligence while there is no other evidence to prove the applicant was negligent.

Under the guidance of the above stated reasons, the court has found there is good cause for granting the application because the applicant was not idle from when the impugned judgment was delivered as demonstrated hereinabove. Therefore, the application is granted and the applicant is granted fourteen (14) days from the date of delivery of this ruling to lodge his appeal in the court. Each party to bear his own costs. Order accordingly.

Dated at Dar es Salaam this 24th day of June, 2022



I. Arufani

JUDGE,

24/6/2022

Court:

Ruling delivered today 24th day of June, 2022 in the presence of Ms. Martha M. Mohamed Advocate holding brief of Mr. Yuaja Barankiliza, Advocate for the applicant and in the presence of Mr. Robert Kipingili, Advocate for respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE,

24/6/2022