

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 219 OF 2022

*(Arising from the decision of the Judgment of the District Land and Housing Tribunal for Ilala in Land Application No. 182 of 2011)*

**MAKAME ALLY KIPARAGO** ..... **APPLICANT**

**VERSUS**

**MERY MAIKO SHEDAFA** ..... **RESPONDENT**

**RULING**

*Date of last Order 01.07.2022*

*Date of Ruling 08.07.2022*

**A.Z.MGEYEKWA, J**

This Court is called upon to grant an extension of time to file an appeal before this court against the decision of the District Land Housing Tribunal in Land Application No. 182 of 2011. The application, preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deposed by Aidan Mutagahywa, the applicant' Advocate. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed

the application by filing a counter-affidavit deponed by Paschal Kihamba, the learned counsel for the respondent.

When the matter was called for hearing on 21<sup>st</sup> June, 2022 when the matter came for hearing, the applicant enlisted the legal service of Ms. Symphorian Kitare, learned counsel, and the respondent enjoyed the legal service of Mr. Symphorian Kitare holding brief for Mr. Pascal Kihamba, learned counsel. By the court order, the application was scheduled to be disposed of by the way of written submission whereby the applicant filed his submission in chief on 24<sup>th</sup> June, 2022. The respondent was required to file a reply before or on 29<sup>th</sup> June, 2022. A rejoinder was filed on 1<sup>st</sup> June, 2022.

In support of the application, Mr. Kitare urged this court to adopt the applicant's affidavit and form part of his submission. He submitted that section 14 of the Law of Limitation Act, Cap. 89 provides that the court may extend the time for any reasonable or sufficient cause. Supporting his submission he cited the case of **Elius Mwakalinga v Domina Kagaruki & others**, Civil Application No. 120/17 of 2018 (unreported). The Court of Appeal of Tanzania provided the following factors to be considered in determining an application for an extension of time; the length of the delay, the reasons for the delay, whether there is an arguable ground, and the

degree of prejudice the respondent if the application is granted. Mr. Kitare was confident that the applicant's application has met those factors. He submitted that the applicant was delayed for 35 days and the law provides 45 days. He added that counting the days of delay from 21<sup>st</sup> February, 2022 when the judgment was delivered, the last day to lodge the appeal was on 5<sup>th</sup> April, 2022 and the delay starts to run from 6<sup>th</sup> April, 2022. In his view counting the days from 6<sup>th</sup> April, 2022 to the date of filing this application on 10<sup>th</sup> May, 2022 is a lapse of 35 days.

The learned counsel for the applicant continued to submit that the reasons for delay are explained under paragraph 3 of the affidavit, the applicant on 23<sup>rd</sup> February, 2022 wrote a letter applying for copies of the judgment and he received the same on 3<sup>rd</sup> May, 2020. He submitted that the applicant could not file this application without attaching the said copies. Supporting his stance he referred this court to the case of **Regional Manager TTCL v Othman Mbarouk & 2 others**, Civil Application No.4 of 2010 CAT at Zanzibar.

He went on to submit that there is no any proof that the documents were ready for collection on 20<sup>th</sup> April, 2022. He added that it is not correct to state that the applicant was supposed to collect the documents even if he is not furnished with the same. Supporting his submission he cited the case of

**Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi v the Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007, the Court of Appeal of Tanzania held that:-

*“...the mere fact that the appellant has made an application but he has not been furnished with the same, without any default on his part, is sufficient to entitle him to secure extension of the period from computing the period of limitation of appeal.”*

It was his further submission that the applicant was not required to prove if he made several follow-ups in the event he wrote a letter requesting for the documents. To buttress his contention he cited the case of **Sofia Bhoke Maryogo v Richard Kisika Mugendi**, Civil Application No. 1 of 2003 (unreported).

The learned counsel for the applicant also raised a ground of illegality, that the tribunal's decision contains several anomalies and the respondent will not be prejudiced if the application is granted. Insisting, he urged this court to consider the computation of period; the day on when the impugned decision was delivered, and the period of requisite for obtaining a copy of the decree or order be excluded.

In conclusion, the learned counsel for the applicant beckoned upon this court to grant the applicant's application.

In reply, the respondent's counsel submitted that the applicant has not stated how he became aware that the copy of the ruling was ready for collection. He added that there is no affidavit of a person who notified the applicant that the copy was ready for collection and there is no any letter to notify the applicant to collect the said letter.

The learned counsel for the respondent contended that the applicant alleged that he filed a letter requesting for a copy of Judgment and Decree on 23<sup>rd</sup> February, 2022, and obtained the said copy on 2<sup>nd</sup> May, 2022. He added that it was a delay of 35 days. Supporting his submission he cited the case of **Mbogo v Shah** [1968] E.A 93. He went on to submit that the applicant is required to account for each day of delay. He added that the applicant delayed collecting the copies of the judgment and decree thus he was required to write a letter requesting the said copies.

The learned counsel for the respondent continued to submit that the applicant was served with a copy of the ruling of the tribunal on 2<sup>nd</sup> May, 2022, and filed the instant application on 10<sup>th</sup> May, 2022. Supporting his submission he referred this court to the judgment and decree which indicate

that the same was ready for collection on 20<sup>th</sup> April, 2022. Mr. Paschal distinguished the cited cases of **The Registered Trustees of the Marian Faith Healing Center @ Wanamaombi** (supra) because in the cited case there was a specific affidavit explaining how the applicant was consistently making follow-ups to obtain copies of the judgment and decree.

The learned counsel for the respondent went on to submit that the applicant is duty-bound to exercise diligence in prosecuting his case. To fortify his position he cited the case of **Ngao Gowin Losera v Julius Mwarabu**, Civil Application No. 10 of 2005. Stressing on the point of account of days of delay, Mr. Paschal submitted that the applicant failed to account for the days of delay, and the illegality is not apparent on the face of the record which can attract this court to grant the application.

On the strength of the above submission, he urged this court to dismiss the application with costs.

In his rejoinder, the applicant's counsel reiterated his submission in chief. He added that the applicant was not notified by anyone. He stated that the principle of accounting for each day of delay does not apply on every sphere of the delay.

Having carefully considered the submissions made by the learned counsel for the applicant and examined the applicant's affidavit, the issue for our determination is ***whether the application is meritorious.***

The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the appeal, written submissions of both learned counsels, the affidavit, and the counter affidavit. The main issue for determination is whether the applicant has adduced sufficient reasons to move this court to grant his application.

The applicant's counsel in his submission tried to convince this court that the applicant has adduced sufficient reasons for his delay. He insisted that the lapse was for only 35 days. Counting for the days of delay, the record shows that the District Land and Housing Tribunal decision was delivered on 21<sup>st</sup> February, 2022 and the applicant requested for copies on 22<sup>nd</sup> February, 2022. In his affidavit, the applicant specifically under paragraph 3 stated that on 23<sup>rd</sup> February, 2022 the applicant applied for copies of the impugned judgment and he obtained the said copies on 2<sup>nd</sup> May, 2022. However, there is no proof that the impugned judgment was ready for collection on 2<sup>nd</sup> May, 2022 and there is no proof whether the applicant collected the said copies on 2<sup>nd</sup> May, 2022.

In my view, since there is no any cogent proof that the copies were issued on 2<sup>nd</sup> May, 2022, then the applicant had to account for the days of delay 5<sup>th</sup> April, 2022. Failure to account for the days of delay means his ground of delay cannot stand.



Concerning the ground of illegality, the respondent's Advocate strongly opposed Mr. Kitare's submission for the reason that illegality is not apparent on the face of the record. I had to go through the applicant's affidavit to find out whether the applicant included the issue of illegality. I have noted that the applicant did not raise an issue of illegality in her affidavit. The alleged illegality is not specifically pleaded in the applicant's supporting affidavit. It means that the learned counsel for the applicant in his submission introduced a new ground which was not featured in the affidavit which implies that the ground of illegality is raised from the bar. Thus, Mr. Kitare submission is an afterthought and the same is disregarded.

Riding on the wisdom sprinkled from the above findings, it is clear that the applicant has failed to account for every single day of delay.

Consequently, I hereby dismiss this application. No order as to costs.  
Order accordingly.

Dated at Dar es Salaam this date 8<sup>th</sup> July, 2022.



  
A.Z. MGEYEKWA  
**JUDGE**  
08.07.2022

Ruling delivered on 8<sup>th</sup> July, 2022 through video conferencing whereas of Mr. Paschal Kihamba, learned counsel for the respondent also holding brief for Mr. Kitare for the applicant was remotely present.



  
A.Z. MGEYEKWA

**JUDGE**

08.07.2022