

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 304 OF 2022

(Originating from the Judgment and decree of the District Land and Housing Tribunal for Ilala at Ilala by (Hon. A.K. Kirumbi) delivered on the 25th day of March, 2022)

HALIFA MWINYIMKUU APPLICANT

VERSUS

KAZIJA HASSAN RESPONDENT

RULING

Date of last Order: 27.07.2022

Date of Ruling: 29.07.2022

A.Z.MGEYEKWA

This ruling is in respect of an application for an extension of time to lodge an appeal out of time against the decision of the District Land and Housing Tribunal for Ilala at Ilala in Land Application No. 141 of 20. The application is preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The application is supported by an

affidavit deponed by Halifa Mwinyimkuu, the applicant'. 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 Kazija Hassan, the respondent.

A brief background of the application is that the applicant was the plaintiff in Land Application No. 304 of 2022 in the District Land and Housing Tribunal for Ilala at Ilala, whereby the decision was delivered on 25.03.2022 in favor of the respondent. Aggrieved with the Judgment and decree of the District Land and Housing Tribunal, the applicant lodged this application seeking for extension of time within which to file an appeal out of time to challenge the said decision.

The Court acceded to the applicant's proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

In his submission, the applicant urged this court to adopt his affidavit and form part of his submission. He stated that he is seeking for extension of time to appeal out time against the decision of the District Land and Housing Tribunal for Ilala at Ilala which was delivered on 25th March, 2022. He claimed that he requested to be supplied with certified copies of Judgment on 4th April, 2022. To fortify his submission he referred this court to **Annexure HM-2**.

He added that he received the copies of Judgment on 29th April, 2022, hence, he realized that the time to appeal had lapsed. It was his further submission that after obtaining the said copies, he lodged his appeal on without first seeking for extension of time, as a result, his appeal was struck out, hence this application. To bolster the same the applicant cited the case of **Ramadhani Nyoni v M/S Haule & Company Advocates** 1996 TLR at page 72 High Court which held that: -

“In a case where a layman, unaware of the process of the machinery of justice, tries to get relief before the courts, procedural rules should not be used to defeat justice and the irregularities in an affidavit are curable in terms of section 95 of the Civil Procedure Code.”

Thus, it was his submission that the delay was not caused by the applicant's negligence or dilatory conduct. He urged this court to apply the overriding objective principle to disregard the technicalities and minor irregularities as it was stated in the case of **Alliance on Tobacco Tanzania Limited and Hamisi Shoni vs Mwajuma Hamis (as the administratrix of the Estate of Philemon R Kilenyi) and Heritage Insurance Company (T)** Misc. Civil Application No. 803 of 2018 (Unreported).

In response, the respondent adopted the counter affidavit and submitted that the applicant has failed to account for each day delayed to file his appeal on time.

He submitted that the given time as per sections 41(1) and (2) of the Land Disputes Court Act, Cap 216 [R.E. 2019] is 45 days from the date of Judgment, however, that such time can be discretionary of this court upon sufficient good reason, extend the time. He also cited the case of **Abdul-Rahaman Salemeen Islam vs Africarries Limited** Misc. Commercial Application No. 203 of 2018 (Unreported held that:-

'Having analyzed the submissions made by the learned Advocates, it is common ground that the grant of an order for extension of time is entirely dependent on the court's discretion and the same has to be exercised judiciously.... Always the applicant has the burden of adducing sufficient reasons and to account for each day of delay. It is also the position of the law that there is no hard and fast rules on what amounts to sufficient reasons...'

He further submitted that counting the statutory 45 days to file an appeal ended on 9th May, 2022. He added that the applicant received the copy on 29th April, 2022, hence the applicant remained with only 10 days, yet he could not use them effectively to lodge an appeal.

The respondent went on to argue that the reason that his appeal was rejected was not supported by any evidence neither copy of such decision was attached for reference. Thus, it was his view that the applicant's application is frivolous, fiction, and tends to abuse the court processes.

In conclusion, the respondent beckoned upon this court to find that the application lacks merit, therefore, the applicant has failed to move this Honorable Court to grant his application.

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 trite law that in the application for an extension of time, it is the court's discretion to grant such kinds of applications. However, 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 fee! 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 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 29th April, 2022, the day when the applicant obtained a copy of the Judgment to the date when he lodged the application before this court on 10th June, 2022 whereas the application was lodged 43 days after obtaining the copy of Judgment.

In the case of **Lazaro Mpigachai v R**, Criminal Appeal No. 75 of 2018, the Court of Appeal of Tanzania 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 Court of Appeal of Tanzania 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 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. Thus, in my considered view, the application was within time.

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

Order accordingly.


Dated at Dar es Salaam this date 29th July, 2022.




A.Z.MGEYEKWA
JUDGE
29.07.2022

Ruling delivered on 29th July, 2022 in the presence of the applicant.




A.Z.MGEYEKWA
JUDGE
29.07.2022