

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 50 OF 2022

(Originating from Misc. Land Application No. 460 of 2020 delivered on 13th August 2021 by Hon. Kirumbi, Chairperson at Ilala District and Land Housing Tribunal)

MODEST KIHANGA.....1ST APPLICANT

MARY MWELU MWAWANGA AND BAKARI SHAURI (as administrator of the estate of the late RASHID QUALLATEIN MWAWANGA.....2ND APPLICANT

VERSUS

SADICK MUSTAFA.....1ST RESPONDENT

JAFARI HAMADI.....2ND RESPONDENT

YUSUFU MRISHO.....3RD RESPONDENT

MOHAMED ABDALA KAPILIMA.....4TH RESPONDENT

ALI MASIKA.....5TH RESPONDENT

ANNA SIMONI NAKAMANGA.....6TH RESPONDENT

Date of last order: 21/7/2022

Date of ruling: 03/8/2022

RULING

A. MSAFIRI, J.

On the 14th day of February 2022, the applicants lodged an application in this Court by way of chamber summons under Section 14 of the Law of Limitation Act [CAP 89 R.E 2019], for the following orders; *Ally-*

- i. *That this Honourable Court be pleased to extend time for the applicant to file an appeal to this Honourable Court against the whole Ruling and Drawn Order delivered by Honourable Kirumbi Chairperson, on 13th August 2021 in Misc. Land Application No. 460 of 2020.*
- ii. *Costs of this application*
- iii. *Any other relief(s) this Honourable Court may deem fit and fair to grant.*

The application has been taken at instance of BraveHill Attorneys and is supported by an affidavit sworn by Matinde K. Waissaka, advocate for the applicant herein.

On 29th June 2022 this Court ordered the application be disposed of by way of written submissions. The applicants had the services of Ms. Matinde Waisaka, learned advocate, whereas on the respondents' side, it is the 2nd respondent only who entered appearance. The rest of the respondents did not enter appearance hence the application proceeded in their absence. Submissions in chief and reply thereof were lodged in time save for the rejoinder submission by the applicants which was lodged in Court on 19th July 2022 instead of 18th July 2022 and there was no an order for extension of time granted to the applicants to lodge the same out of prescribed time. Hence the rejoinder submissions by the applicants will not be considered.

Aile

The applicants having adopted the affidavit in support of the application, contended that the length of the delay was 137 days and the reason for the delay was attributed by not being supplied timely with the copies of judgment and decree in which the impugned judgment was delivered on 13th August 2021 and they wrote a letter requesting for the copy of the judgment on 16th August 2021.

The applicants contended further that the said copy of judgment was not availed to them on time hence they wrote a reminder letter on 26th November 2021 but it was not until 11th February 2022 when the applicants were availed with the certified copies of judgment and decree.

To fortify their stance the applicants have cited the decision of the Court of Appeal in the case of **The Director of Public Prosecutions v Mawazo Saliboko @ Shagi & 15 others**, Criminal Appeal No. 384 of 2017 Court of Appeal of Tanzania at Tabora (unreported) in which the Court was of the unanimous position that the time one awaits for issuance of the copies of judgment or proceedings has to be excluded.

The applicants have contended further that there are chances of success because there are illegalities on the Tribunal's decision sought to be appealed against because the Tribunal failed to take into account evidence adduced as required by the law.

To buttress their point, the applicants have cited the decisions of **Kinondoni Municipal Council v Yusuph Mohamed Nandile & others** Misc. Application No. 500 of 2018 and **JHPIEGO v Emmanuel Mmbaga**, Misc. Labour Application No. 238 of 2019 and **Hezron Magessa Mariogo**

Adls.

v Kassim Mohamed Said Civil Application No. 227 of 2015 (both unreported) in which it was observed that illegality is a sufficient reason for extension of time. And where illegality is established there is no need to account for each day of delay.

Lastly the applicants contended that the applicants will be prejudiced if the application won't be granted as they will suffer an irreparable loss as they stand to lose their land.

On his part, the 2nd respondent contended that it is not in dispute that the judgment sought to be appealed against was delivered on 13th August 2021 and on 16th December 2021 the said judgment was ready for collection hence the period between the two dates ought to be excluded. However the 2nd respondent contended that the period from 16th December 2021 up to 7th February 2022 which in totality makes 54 days should not be excluded because the copies were ready for collection on 16th December 2021. Hence the applicants ought to have accounted for the 54 days.

The 2nd respondent submitted further that the applicants have failed to account for that period hence this application should not be granted. To fortify his stance, the 2nd respondent has cited the decision of **John Dongo & 3 others v Lepas Mbokoso** Civil Application No. 14/01 of 2018 and **Finca (T) LTD & another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (both unreported) in which in both cases it was emphasized that delay even for a single day has to be accounted for.

On the issue of illegalities complained of, the 2nd respondent contended that the applicants did not establish any illegality in their affidavit. *Allg*

Reference was made to the decision of **Jailos Mahali v Furaha Vahaye & Furahin Vahaye** Misc. Land Application No. 800 of 2020.

Having gone through the submissions of the parties, rival and in support of the application, the issue which calls for the Court's determination is whether the application has merit.

Parties to the present application are at one with the requirements to show sufficient reasons for application of extension of time like the present one. However what parties are in disagreement with are the reasons advanced. It is trite law that in an application for extension of time to do a certain act, like in present one, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time.

There are decisions both of this Court as well as the Court of Appeal of Tanzania which require good cause to be shown before the Court can exercise its powers for extension of time, are; **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application no. 4 of 2014 (both unreported).

In the instant application, the applicants have advanced two reasons for consideration by the Court to exercise its discretion for extension of time. The said reasons are that first the applicants were not supplied with the copies of judgment and decree timely and second there are illegalities on the judgment sought to be appealed against.

Aille

It is not in dispute that the judgment of the District Land and Housing Tribunal for Ilala was delivered on 13th August 2021 and the applicants immediately requested for the said copy on 16th August 2021. It is not also in dispute the applicants wrote another reminder letter on 26th November 2021 requesting for the copies of judgment and decree.

Although there is no proof that the said two letters were served to the respondents, the judgment was ready for collection on 16th December 2021. This is the date on which the said judgment was signed by the learned trial chairperson. Hence as rightly submitted by the 2nd respondent the time which has to be excluded runs from 13th August 2021 when the judgment was delivered to 16th December 2021 when the judgment was signed.

It is apparent clear that the applicants having lodged the reminder letter on 26/11/2021 it was until 4th February 2022 they went again to the District Tribunal and were able to collect the copies of judgment and decree which I am of the settled mind that they were ready for collection since 16th December 2021.

The claims by the applicants on paragraph 8 that they used to make physical follow ups and that they were informed the copies had been typed but not yet signed are not backed up by any proof because if that was the case then the date on the judgment would have not been 16th December 2021. This to me shows that applicants were sloppy in making follow ups to secure the copies of judgment and decree.

Alle

Hence I agree with the applicants that the reason that they were waiting for copies of judgment and decree is in their favour but not later than 16th December 2021. From 16th December 2021 the applicants had a total of forty five (45) days to lodge their appeal which ought to have been lodged on or before 31st January 2022. As the present application was filed in court on 14th February 2022 the applicants ought to have strictly accounted for said **14 days** on each day lapsed.

Going by the applicants' affidavit they were supplied with the said copies of judgment on 8th February 2022 after they had failed to pay for the same on 4th February 2022 due to problem in the system of generating control number and they spent three days in preparation of the present application which was filed online 11th February 2022. These facts when taken in their totality I am of the settled mind the delay wasn't that inordinate.

Having seen the circumstances above I need not consider the allegations of illegality therefore I grant this application. The applicants should lodge their intended appeal within **21 days** from the date of this ruling. Costs to abide with the outcome of the intended appeal.

It is so ordered.



A. MSAFIRI,

JUDGE

03/8/2022