

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA
MISC. LAND APPLICATION NO. 394 OF 2022**

GEORGE JULIUS MAGONYOZI APPLICANT

VERSUS

THE REGISTRERED TRUSTEE KANISA

LA PENTEKOSTE TANZANIA RESPONDENT

RULING

Date of last Order: 18.08.2022

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A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] to extend time for the applicant to lodge an appeal to this court against the decision of the District Land and Housing Tribunal in Land Application No.208 of 2019 dated 1st February, 2017. The application is supported by an affidavit deponed by George Julius

Magonyozi, the applicant. The respondent resisted the application and has demonstrated their resistance by filing a counter affidavit deponed by Mr. Nehemia Gabo, the learned counsel for the respondent.

When the matter was called for hearing on 18th August, 2022, the hearing was conducted through video conferencing whereas the appellant enjoyed the legal service of Mr. Remmy William, learned counsel, and the respondent had the legal service of Mr. Nehemia Gabo, learned counsel.

In support of the application, Mr. Remmy urged this court to adopt the applicant's affidavit to form part of his submission. Mr. Remmy submitted that the applicant seeks an extension of time to file an appeal against the Judgment and Decree of the District Land and Housing Tribunal. He submitted that the applicant's sole ground for extension of time is because he delayed obtaining the copies of the tribunal's decision. He stated that the judgment was delivered on 1st February, 2022, and on 17th February, 2022 they wrote a letter requesting copies of the judgment. He added that on 16th March, 2022 they collected the said copy and thus, found themselves out of time, therefore, they had to lodge an application for extension of time.

Mr. Remmy went on to assert that counting the days of delay from the date of when the judgment was delivered on 1st February, 2022 to 16th

March, 2022 the date, when they received the copies, is a lapse of 45 days, plus the days of preparing and filing their appeal, the applicant found himself out of time to lodge an appeal. The learned counsel for the applicant went on to submit that the applicant lodged Misc. Land Application No. 140 of 2022 before Hon. Arufani, J but the application was struck out, hence the instant application. He stated that this court can grant an extension of time if the applicant has adduced sufficient reasons. To support his submission he cited section 41 (2) of the Law of Limitation Act, Cap.89, and the case of **Vodacom Tanzania Public Company Ltd v Tanzania Revenue Authority**, Civil Application No. 465/ 2019. He added the Court of Appeal of Tanzania with approval cited the case of **Fortunatus Msha v Remmy Shija and Another** [1997] TLR 154. He added that the cited **Fortunatus's** case supports his previous application before Hon. Arufani, J.

On the strength of the above submission, Mr. Remmy beckoned upon this court to grant the applicant's application with costs.

Objecting to the application, in his written submission, Mr. Nehemia, learned counsel for the respondent resisted the application based on two grounds. He averred that there is no delay in obtaining the copy of the judgment which was delivered on 1st February, 2022 and a certified copy was ready for collection on 14th March, 2022. He stated in counting the

days, the applicant had 3 days to file an appeal, but he did not file the said appeal for his own reasons. Mr. Nehemia went on to submit that the applicant files a Misc. Land Application No. 140 of 2022 after a lapse of 20 days. He added that the applicant did not account for the days of delay. To fortify his submission he cited the case of **Tanzania Fish Processors Ltd v Yusto Ntagalinda**, Civil Application No. 41 /08 of 2018 (unreported). The learned counsel for the respondent went on to argue that the time started to run from the time when they obtained the certified copies and not on the date when the judgment was delivered.

He continued to submit that from 14th March, 2022 when the applicant obtained the certified copies to 4th April, 2022, the applicant was within time to file an appeal. To buttress his contention he referred this court to the case of **Alex Senkoro & 3 Others v Eliambuya Lyimo**, Civil Appeal No.16 of 2017 (unreported). He contended that it was the negligence of the applicant and advocate to file the application within time. To buttress his submission he cited the case of **Omary R Ibrahim v Ngege Commercial Services Ltd**, Civil Application No. 83 /01 of 2020.

On the strength of the above submission, Mr. Nehemia the applicant has failed to adduce sufficient cause for his delay to file an appeal. He urged this court to dismiss the application with costs.

In his rejoinder, Mr. Remmy reiterated his submission in chief. He insisted that the Law of Limitation Act, Cap. 89 requires the applicant to file an appeal within 45 days from the date he received the copies. . He distinguished the cited case of Alex (supra) that the Court of Appeal of Tanzania discussed the exclusion of time when a party was waiting to receive copies of judgment and in land cases, the applicable law is the Law of Limitation Act, Cap. 89 not the Civil Procedure Code Cap. 33 . He insisted that after obtaining the certified copies the applicant promptly filed the instant application. In conclusion, the learned counsel urged this court to grant the applicant's application

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavits and counter-affidavits, the issue for our 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 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 applicant was within time when he filed the previous application. However, the applicant found himself out of time at the time when Misc. Land Application No. 140 of 2022 was withdrawn. As amply submitted by Mr. Remmy that the applicant's delay falls under technical delay which is explicable and excusable as stated in the case of **Fortunatus Masha** (supra). Thus, in my view, the delay in the instant application qualifies as a technical delay.

Technical delay is explicable and excusable in the cases of **Salvand K.A Rwegasira v China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006, **Bank of Tanzania Ltd v Enoch Mwakyusa** Civil Application No. 520/18 of 2017 (unreported), **Zahara Kitindi & Another v Juma Swalehe & 9 others**, Civil Application No. 4/05 of 2017, **Yara Tanzania Limited v DB Shapriya and Co. Limited**, Civil Application No. 498/16 of 2016, and **Samwel Kobelo Muhulo v. National**

Housing Corporation, Civil Application No. 302/17 of 2017 (all unreported) and the landmark case of **Fortunatus Masha v Remmy Shija & Another** (supra) in which the Court of Appeal of Tanzania held that:-

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which only involved **technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted.** In the present application, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances, an extension of time ought to be granted."*
[Emphasis added].

Applying the above position of the law, it is crystal clear that the applicant's delay was a technical delay contrary to the observation of Mr. Nehemia, learned counsel for the respondent. I have gone through the applicant's affidavit and found that the applicant has demonstrated his technical delay on paragraph 8 of his affidavit.

Having unflinchingly reviewed the depositions in the affidavit and the submissions made by the applicant's learned counsel and the respondent learned counsel, I am convinced that this case fits in the mould of cases for which extension of time on the ground of actual delay may be granted.

Therefore, I proceed to grant the applicant's application to lodge an appeal out of time before this court within 45 days from today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 18th August, 2022.




A.Z.MGEYEKWA

JUDGE

18.08.2022

Ruling delivered on 18th August, 2022 via audio teleconference, whereas Mr. Remmy William, learned counsel for the applicant and Mr. Nehemia Gabo for the respondent were remotely present.




A.Z.MGEYEKWA

JUDGE

18.08.2022