

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 49 OF 2023**

*(Arising from the District Land and Housing Tribunal for Kinondoni in  
Application No. 439 of 2015 by Hon. L.R. Rugarabamu, Chairman)*

**KIVARIA SHENGENA ..... APPLICANT**

**VERSUS**

**FLORA D. RUTA ..... RESPONDENT**

**RULING**

Date of last Order: 07.03.2023

Date of Ruling: 09.03.2023

**A.Z. MGEYEKWA**

In this application, the Court is called upon to grant an extension of time to enable the applicant to institute an appeal before this Court against the decision of the District Land Housing Tribunal in Land Application No.439 of 2015. The application is preferred under the provisions of section 41 (1) & (2) of the Land Disputes Courts Act, Cap.216 [R.E 2019]. The Application is premised on the grounds appearing on the Chamber

Summons together with the supporting affidavit of Kivaria Shengena, the applicant sworn on 3<sup>rd</sup> February, 2023 which he averred that the applicant delayed to file an appeal because he delayed receiving the copies of the impugned Judgment.

The Application is contested. The respondent filed the counter affidavit of Severa Nestory Mtungi, the respondent sworn on 28<sup>th</sup> February, 2023 in which the respondent disputed paragraphs 2, 3, 4,5, and 7, 11, 12, 13, 14, and 15 of the applicant's affidavit.

When the matter was called for hearing on 7<sup>th</sup> March, 2023, the applicant enlisted the legal service of Mr. Innocent Mwelelwa, learned counsel, the respondent had the legal service of Ms. Cypriana William, learned counsel.

Supporting the application, Mr. Innocent adopted the affidavit deponed by Kivaria Shengena, the applicant to form part of his submission. The learned counsel for the applicant submitted that the main reason for the applicant's delay to file his appeal within time is that the applicant was not supplied with copies of the Judgment and Decree within time. Mr. Innocent stated that the Judgment was delivered on 5<sup>th</sup> September, 2022 and the copies were not issued hence the applicant was unsuccessful and wrote three reminder letters. He stressed that it is the requirement of the law to

attach copies of the impugned decision in the intent appeal, hence the applicant found himself out of time to file an appeal.

Regarding the ground of illegality, Mr. Innocent submitted in length. In a summary, he claimed that the sale of the suit land was done by Michael Mloka on behalf of Flora D. Ruta but unfortunately Michael Mloka was not joined as a party of the suit. The learned counsel for the applicant submitted that, the law requires a vendor be joined as a party to the case to afford him the right to be heard. To fortify his submission, he cited the case of **Chausiku Kitwana Maboga v Victor Bernard** (Administrator of the estate of the late Hamis Kowelo), Civil Application No. 336/ 17 of 2021 CAT.

The counsel for the applicant did not end there, he stated that the period requisite for obtaining copies of the impugned Judgement is excluded. He claimed that the matter of being supplied with the said copies was out of his control, thus, the learned counsel for the applicant urged this Court to consider this ground and grant the applicant's application. To bolster his submission, Mr. Innocent cited the case of **Geita Gold Mining Ltd v Anthony Karangwa**, Civil Appeal No. 42 of 2020.

On the strength of the above submission, Mr. Innocent beckoned upon this Court to grant the applicant's application.

In her reply, Ms. Cypriana did not dispute that the Judgment was delivered on 5<sup>th</sup> September, 2022. She argued that they have disputed the application in paragraphs 2, 3, 4, 5, 6 and 7 of his counter-affidavit because the applicant's reasons are based on evidence instead of grounds for an extension of time. She contended that it is unjustifiable to say that Michael Mloka sold the said land on behalf of Flora as they had a chance to call him as his witness. She valiantly argued that the applicant has failed to account for the days of delay. She stressed that on paragraph 12 of the applicant's affidavit, the applicant did not state his whereabouts, instead he simply stated that he was out of the Dra es Salaam Region to attend family matter.

On the strength of the above submission, the learned counsel for the applicant beckoned upon this Court to dismiss the application.

In rejoinder, counsel for the applicant reiterated his submission in chief. He insisted that the applicant has accounted for the days of delay and the respondent was aware thus he was required to join the seller to enable both parties to be given right to be heard.

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 the legal position that extension of time, being an equitable discretion, its exercise must be judicious. As stated in numerous decisions, 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 **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 the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice."*

The counsel for the applicant has submitted in length on the issue of computation of time. I am in accord with Mr. Innocent that the period requisite for obtaining a copy of the Judgment, decree or order appealed from is excluded. 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 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 appeal to this court has to be computed. The aggrieved party is required to lodge an appeal from the District Land and Housing Tribunal within 45 days. Section 41 (2) of the Land Disputes Court Act Cap 216 [R.E. 2019] provides that: -

*“(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 the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.”*

I have read the affidavit and found that the impugned decision was delivered on 5<sup>th</sup> September, 2022 and the applicant alleged that he obtained the copies on 19<sup>th</sup> January, 2023. The counsel for the respondent in her submission did not object that they were supplied with the said copies on 19<sup>th</sup> January, 2023. In the case of **Lazaro Mpigachai v R**, Criminal Appeal No. 75 of 2018, the Court of Appeal of Tanzania 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.”*

In computing days of delay from 19<sup>th</sup> January, 2023 when the copy was supplied to the applicant to 7<sup>th</sup> February, 2023 when the application was lodged before this court it is only 20 days, hence the applicant is still within time to lodge his appeal.

In light of the stated position of the law, the current application has merit. Therefore, I need not indulge myself to deal with the remaining grounds for extension of time.

In the upshot, I grant the application, the applicant is allowed to file an appeal within thirty days from the date of this Ruling. No order as to costs. Order accordingly.

Dated at Dar es Salaam this date 9<sup>th</sup> March, 2023.



A.Z.MGEYEKWA

**JUDGE**

09.03.2023

Ruling delivered on 9<sup>th</sup> March, 2023 in the presence of Mr. Innocent Mwelelwa, learned counsel for the applicant.



A.Z.MGEYEKWA

**JUDGE**

09.03.2023