

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND CASE APPLICATION NO. 614 OF 2022**

BETWEEN

BISHOP RAPHAEL RUBEN HAULE APPLICANT

VERSUS

WLG INVESTMENT COMPANY LTDRESPONDENT

RULING

Date of last Order: 02/3/2023

Date of Ruling: 14/03/2023

A. MSAFIRI, J.

The applicant Bishop Raphael Ruben Haule, lodged this Application under Section 41 (2) of the Disputes Courts Act, Cap 216 RE. 2019 (herein the Act) seeking for the following orders;

- i. That this Honorable Court be pleased to extend time to the Applicant within which to an Appeal in respect of Land Application No. 11 of 2022 between Bishop Raphael Ruben Haule vs. WLG Investment Company Ltd, which was delivered on 04/8/2022 before Hon. Chinyele Chairperson.
- ii. Any other relief this Honorable Court may deem fit and just to grant.

The application is supported by an affidavit of the applicant himself. *Atle*.

The respondent was served accordingly but for the reasons known to himself, he never entered appearance in Court nor filed the counter affidavit. Hence on 02/3/2023, this Court ordered hearing of the application to proceed in absence of the respondent.

By the prayer of the applicant and leave of the Court, the ex-parte hearing was conducted by way of written submissions and the submissions was filed within the time as scheduled.

The applicant was represented by Mr. Godwin Godlove, learned advocate who submitted that, the applicant delayed to file an appeal on time as he was waiting to be supplied with a copy of judgment from the trial Tribunal. That the delay was caused by the reluctancy of the trial Tribunal to supply him with the requisite copy.

In his affidavit, the applicant averred that on 24/08/2022, the advocate for the applicant wrote a letter to the trial Tribunal requesting to be supplied with the certified copy of the judgment, unfortunately the same was not supplied to him as requested. He said that, despite of several reminders, the certified copy of judgment was never supplied to the applicant.

That, on 19/9/2022 after numerous attempts, the applicant again wrote a letter to the trial Tribunal requesting for the said copy of judgment, and the same was at last availed to him through advocate Kefa Anase.

That, having been availed with the requisite copy, the applicant realized that he was out of 45 days of lodging an appeal so, on 20/9/2022 he instructed his advocate to file an application for extension of time to file the same. *Alle*

That, on 21/9/2022, the said advocate started to prepare the application for extension of time but unfortunately on 22/9/2022, the said advocate had to appear before the Court of Appeal in Civil Revision Case No. 49/01 of 2022.

He submitted that it was on 23/9/2022 where the preparation for filing the necessary document was ready and they were uploaded online. He maintained that the delay was not caused by negligence on his part but due to the delay of getting certified copy of judgment from the trial Tribunal.

Having gone through the applicant's submission in support of the application at hand, the sole issue is whether the application has merit.

The present application has been preferred under Section 41(2) of the Act. It reads;

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 [Emphasis added].*

From the foregoing provision of the law, for the Court to exercise its discretion for extension of time, good cause must be shown. However, what constitutes good cause as required under the above cited provision has not been defined. In a number of decisions, a number of factors have to be considered. These are; whether or not the application has been brought promptly a valid explanation for the delay and whether there was diligence

Act.

on the part of the applicant. (See the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women Christian Associations**, Civil Application No. 2 of 2010 (unreported).

In the present application, the sole reason advanced by the applicant is that the applicant was supplied late with a copy of the decision sought to be appealed against. It is a settled law that the time within which the copy of the decision is being awaited for is excluded as provided under Section 19(2) of the Law of limitation Act, Cap 89 R.E 2019 it reads as follows;

19 (2); in computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of 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.

Going by the above provision, and basing on the submissions from the applicant's advocate and the contents of his affidavit, the impugned decision was delivered on 04/8/2022.

On 24/08/2022, the request letter was written to the trial Tribunal requesting to be supplied with the copy of the impugned judgment. The said letter was annexed to the affidavit. That, again on 18/9/2022, the applicant through his advocate requested to be availed with the requisite copy. The letter was received by the trial Tribunal on 19/9/2022.

So, from the date the applicant was supplied with the said copy, be it on 15/9/2022 as the copy of the decree/ award shows, or on 19/9/2022 as the *Aelle*.

applicant claims to the date this application was filed i.e. on 30/9/2022, the applicant was still within time to file their intended appeal. In addition, the applicant has accounted for each day of delay as required by the law.

For the above reasons, I find the application to have merit, and it is hereby allowed.

The applicant should file his intended appeal within 21 (Twenty-one) days from the date of this ruling.

I make no order as to the costs.



A. MSAFIRI

JUDGE

14/03/2023