

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 122 OF 2023

*(Originating from the judgment of Kinondoni District Land and Housing
Tribunal, Application No. 80 of 2020)*

STADIUS NDIBALEMA APPLICANT

VERSUS

HASSANI RAMADHANI RESPONDENT

RULING

Date of the last Order: 24.04.2023

Date of Ruling: 24.04.2023

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 to this Court, against the decision of the District Land Housing Tribunal in Application No. 80 of 2020. The application, preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deposed by Stadius Ndibalema, 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 Hassan Ramadhani, the respondent.

When the matter was called for a hearing on 24th April 2023, the applicant and respondent appeared in persons unrepresented.

On his submission, the applicant adopted the affidavit to form part of this submission. He was brief and straight to the point. The applicant submitted that the impugned judgment was delivered on 3rd February 2023, however, the record shows that the District Land and Housing Tribunal delivered its Judgment on and on 3rd January 2023 which is incorrect. The applicant went on to submit that on 3rd February 2023, he wrote a letter requesting a copy of the impugned Judgment He went on to submit that he made several follow up but was informed that the copies are not ready. Thus, he had to file the instant application before this Court on 13th March 2023.

In his reply, the respondent had not much to say. He opposed the application for the reason that the case at the District Land and Housing Tribunal was determined to its finality and the Tribunal delivered its judgment on 3rd January 2023.

Rejoining, the applicant reiterated his submission in chief.

Having gone through the submission from both sides, it appears that the issue for determination is *whether the applicant has advanced sufficient grounds to warrant this Court to grant his application.*

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 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 lodge an 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.”

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 the date when the impugned Judgment was certified on 2nd March 2023 to 13th March 2023 when the application was lodged before this court, it is only 11 days, hence the statutory period of filing an appeal before this Court did not lapse.

In the upshot, I proceed to grant the instant application, the applicant is allowed to file an appeal within 45 days from today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 24th April 2023.




A.Z.MGEYEKWA
JUDGE
24.04.2023

Ruling delivered on 24th April 2023 via video conferencing whereas the applicant and respondent were remotely present.




A.Z.MGEYEKWA
JUDGE
24.04.2023