

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 69 OF 2023
(Arising from Land Case No. 08/2021, Land Division)

SAEED YESLAM SAEED.....APPLICANT

VERSUS

MTAITA MCHARO MCHOME.....1ST RESPONDENT
RICHARD CLEMENT MABULA (RICHARD SIMON).....2ND RESPONDENT
FELIN CHARLES.....3RD RESPONDENT
GERVAS SIMON BUPAMBA.....4TH RESPONDENT
VERONICA SIMON BUPAMBA.....5TH RESPONDENT
PAULO SIMON BUPAMBA.....6TH RESPONDENT
MARTINA PASKALI MAGUNGULI.....7TH RESPONDENT
HELENA MAGANGA HALAMA.....8TH RESPONDENT
ALLY SELEMANI MACHEMBA.....9TH RESPONDENT
ABDALLAH MASHAKA SEFU.....10TH RESPONDENT
ROSE JAPHET KAFUMA.....11TH RESPONDENT
EMELDA A. RWAKATALE.....12TH RESPONDENT
YOHANA SATIEL MWARIEGO.....13TH RESPONDENT

RULING

28/7/2023 to 1/08/2023

E.B. LUVANDA, J

The Applicant named above preferred this application for extension of time within which to file a notice of appeal against the decision of this Court in Land Case No. 8/2021 dated 21/12/2022.

In the affidavit in support, the Applicant deponed that after obtaining a copy of the impugned judgment on 9/02/2023 (as per annexure "C" to the affidavit), it is when he realized some discrepancies on a verdict different from what he heard when the impugned judgment was delivered on 21/12/2022, in that the piece of land which is not within the certificate of title remain as it was without declaring the lawful owners. That now he is aggrieved by the decision which declared him trespasser against the piece of land which is not within a certificate of title for the lacking of evidence of other Respondents to prove their ownership.

On a joint counter affidavit, the Respondents contended that there is no difference from what is contained in the written judgment and what was pronounced by the presiding Judge, in which it was pronounced clearly that except the 1st, 4th and 5th Respondents, the remained Respondents there is no reasons of this Court to declare them as the lawful owner of their piece of land. That the Respondents are lawful owners of the said piece of land as declared by this Court in the judgment except the 1st, 4th and 5th Respondents.

Mr. R. Mrindoko learned Counsel for Applicant submitted that the Applicant ought to have filed a notice of appeal within thirty days, however did not comply as he was not aware of the said contradictory verdict. He submitted

that the period from 21/12/2022 to 9/2/2023 has been accounted for as per the requirement, in that the delay to lodge a notice of appeal was not deliberate but he was not aware of the said contradiction in the pronounced judgement and the certified one which declared him as trespasser in the land which is outside the deceased farm. He submitted that the period of eight days counting from 9/02/2023 when he obtained the judgment to 17/2/2023 when this application was filed, is not inordinate given that the Applicant needed time to prepare and file the application. He cited the case of **Murtaza Mohamed Raza Viran & Another vs Mehboob Hassanali Versi**, Civil Application No. 448 of 2020; **Principal Secretary Ministry of Defence and national Service vs Devram Valambhia** (1992) TLR 185; **Maletha Gabo vs Adam Mtengu**, Civil Appeal No. 485 of 2022.

Mr. Idd Ally Mrema learned Counsel for Respondents opposed the application arguing that failure to understand the contents of the pronounced judgment is not and has never been a valid reason for extension of time or reasonable ground for extension of time, citing negligence on the part of the Applicant's Counsel. He cited the case of **Omari R. Ibrahim vs Ndege Commercial Services Ltd**, Civil Application No. 83/01 of 2020. The learned Counsel submitted that court record is sanctified record and are considered authentic and cannot be easily impeached or questioned. He cited the case of **Halfani**

Saidi vs Abieza Chichili (1998) TLR 527. He submitted that the Applicant did not account for each day of delay, in particular nine days from 9/2/2023 to 17/2/2023. He cited the case of **Zuberi Nassoro Moh'd vs Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2018.

On rejoinder, the learned Counsel for Applicant submitted that he did not say that he failed to understand the content of judgment, instead the Applicant said that the judgment which he heard being orally given by the judge is in some area different from the certified copy supplied to him on 9/2/2023. He submitted that he was not aware of the said verdict that is why he is seeking for extension of time. On the illegality, he submitted that it was irregular for the Respondents to institute a case against the Applicant in her own capacity for a landed property owned by the deceased.

Generally, the Applicant have grounded the reason for delay being the alleged discrepancy in what he grasped when the judgment was pronounced on 21/12/2022 and what he actually read in a typed judgment obtained on 9/2/2023. The Applicant accounted delay to have been attributed to delay in obtaining a typed judgment, which he alleged to have procured belatedly on 9/2/2023 as per annexure "C" to the affidavit. This fact was not dispelled by the Respondents, rather their query was on the conduct and allegations by the Applicant who is suggesting to impeach, question the actual certified

record of a judgment and what he grasped when it was pronounced in court. To my view, whether or not such anomaly or disparity exist is not of my concern here. Suffices to say, the Applicant have accounted the delay attributing to delay in availment of copy of judgment from when it was pronounced on 21/12/2022 to 9/2/2023 when a typed, certified copy was collected, and it is when the Applicant formed an intention of appealing against it, having noted that he was unhappy with some of the verdict on it. To my view a period of nine days from 9/2/2023 when a judgment was collected, to 17/2/2023 when this application was filed, is within condonation, and as accounted by the learned Counsel for Applicant, it was used for preparation of documentations for filing.

Therefore, the application is merited. The Applicant is given an extension of fourteen (14) days to lodge the intended notice of appeal. Time will commence running from the date hereof.

The application is granted. No order for costs.




E.B. LUVANDA
JUDGE
01/08/2023