

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB - REGISTRY OF MWANZA)

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 91 OF 2022

(Arising from the District Land and Housing Tribunal for Ukerewe at Ukerewe in Application No.24 of 2018)

RUBI MASATU.....	1 ST APPLICANT
NYACHILO LAURENT.....	2 ND APPLICANT
TATU MUNGALA.....	3 RD APPLICANT
ZUBERI KORONGO.....	4 TH APPLICANT
MAMBWENDE SULUSI.....	5 TH APPLICANT
MAGAMBO SULUSI.....	6 TH APPLICANT
SHUKRANI SAMBIZI.....	7 TH APPLICANT

Versus

ADELA JOSEPHAT MWANGWA (*Administratrix of the estates of Josephat Mwangwa*)RESPONDENT

RULING

Feb. 20th & Apr. 18th, 2023

Morris, J

The Court is, at the instance of seven applicants above, being moved to determine the application for extension of time. If successful, the applicants intend to appeal against the decision of the District Land and Housing Tribunal for Ukerewe (DLHT) in Application No. 24/2018. The respondent is contesting the application. In

support of the application, an affidavit of SHUKRANI SAMBIZI – 7th applicant, was filed. The respondent, too, filed her counter affidavit. The matter was heard by way of written submissions which were filed as scheduled.

Per the record, the respondent successfully sued the applicants at DLHT. She invited the trial Tribunal to determine who the rightful owner of the disputed land between the litigants was. The respondent was declared the owner. The applicants have now escalated the litigation-race to this Court. They are, however, still having a time-bar huddle to cross before filing the envisaged appeal. They failed to observe the timeline, hence, this application.

The summary of parties' rivalry submissions is straightforward. The applicants submitted that they were late to file the appeal as they were not supplied with copies of decree timely. That is, after delivery of judgement on 19.08.2022, they were told by DLHT to collect copies of judgement and decree after 14 days. However, up to 13.09.2022, the 7th applicant was supplied with only copy of judgement without a decree. The latter was supplied to him on 11/10/2022. By then, applicants were already time-barred.

They also argued that, according to order XXXIX rule 1(1) of ***the Civil Procedure Code*** [Cap 33 R.E. 2019]; the petition of

appeal should all be attached with copies of judgment and decree unless the court directs otherwise. Further, it is argued that, after being supplied with the decree, the applicants spent some time looking for legal assistant. They are all laymen. In supporting their arguments, they referred to ***Osward Masatu Mwizarubi v Tanzania Fish Processors Ltd***, Civil Application No. 13 of 2010 and ***Omary Shamte Ngweya v Rahma Ally Mjje***, Misc. Land Case No. 474 of 2021 (both unreported). Applicants insisted, as well, that to attach copy of decree in the appeal was mandatory pursuant to the case of ***Juma Ibrahim Mtale v K.G Karmali*** [1983] TLR 50.)

The respondent, on her part, through written submissions by Advocate Gasper Mwanalyela, submitted *inter alia* that, it is a long-settled position of the law that for an application for extension of time to be granted, sufficient reason(s) for the delay must be given. The respondent was of the view that, the applicants failed to account for 21 days from the date she was supplied with a decree to the date of filing.

I was referred to ***Tanga Cement Company v Jumanne D. Masagwa and another***, Civil Application No. 6/2001; ***Praygod Mbaga v Government of Kenya Criminal Investigation***

Department and another, Civil Reference No. 4 of 2019; ***Osward Masatu Mwizarubi v Tanzania Processing Ltd***, Civil Application No. 13/2010; ***Dar es Salaam City Council v Jayantilal P. Rajani***, Civil Application No. 27 of 1987; ***Said Nassor Zahor and Others v Nassor Zahor Abdallah El Nabahany and another***, Civil Application no. 278/15 of 2016; and ***Bushiri Hassan v Latifa Lukio Mashayo***, Civil Application no 3 of 2007 (all unreported).

The respondent contended further that, according to section 41 (1) and (2) of ***the Land Disputes Courts Act*** [Cap 216 R.E. 2019]; there is no requirement to attach to the memorandum of appeal copies of judgement and decree. To her, the law requires the appeal to be filed to the Court within 45 days of the DLHT decision. Also, the applicants were at liberty to lodge the instant application before expiry of 45 days so that the Court would dispense with the decree requirement per section 41 (2) of ***Cap 216*** (*supra*). In addition, the respondent faulted the affidavit supporting this application for containing hearsay information from the 1st to 6th applicants; and the Chairman and clerk of the Tribunal.

From the above contentious arguments, the Court will determine the application by answering one major question: whether or not grounds advanced by the applicants (delay to being supplied

with copy of decree and time spent seeking legal assistance) suffice to support this application. I will analyze each ground at a time.

It is a cardinal law that the powers to extend the time is discretionary. This discretion should be exercised judiciously as opposed to personal whims, sympathy, empathy or sentiment. See, for instance, ***Bakari Abdallah Masudi v Republic***, CAT Criminal Application No. 123/07 of 2018 and ***Bank of Tanzania v Lucas Masiga***, Civil Appeal No. 323/02 of 2017 (both unreported). Further, the law requires that the applicant should demonstrate sufficient reason(s) as to why he/she did not take the necessary step(s) in time. In so doing, he/she will discharge the obligation of proving how each day of delay justifiably passed by at no fault of him/her. Accordingly, the subject applicant will deserve the Court's discretionary advantage as it was held in ***Hamis Babu Bally v The Judicial Officers Ethics Committee and 3 Others***, CAT-Dar es Salaam, Civil Application No. 130/01 of 2020 (unreported).

The essence of setting the time limits in law is, among other objectives, to promote the expeditious dispatch of litigation (see ***Costellow v Somerset County Council*** (1993) IWLIR 256); and



to provide certainty of time tables for the conduct of litigation (see ***Ratman v Cumara Samy*** (1965) IWLR 8).

The **first** ground is that applicants were not supplied with the necessary documents in time. That is, they were supplied with the decree on 11.10.2022 when they were already out of time to appeal. However, the respondent maintained that no mandatory requirement to attach decree; and that if it were, applicants should have applied for extension of time before the expiry of 45 days.

It has been pronounced, in a number of authorities, that lack of copy of impugned judgement/decreed can only be reason for extension of time if attaching the same in the petition of appeal in required by the law. See, for instance, ***Gregory Raphael v Pastory Rwehabula*** (2005] TLR 99; and ***Sophia Mdee v Andrew Mdee and 3 others***, CAT Civil Appeal No. 5 of 2015 (unreported).

Relevant to the present matter is that, appeals from DLHT are governed by section 41(1) and (2) of ***Cap 216*** (*supra*). Section 41(2) in particular, directs the appeal to be filed within 45 days from the date of decision or order and the proviso gives this Court jurisdiction to extend the time either before or after expiration of that period. Regarding the documents to accompany the said appeal reference is

made to section 51 (1) of the same law which directs the use provisions of ***the Civil Procedure Code*** [Cap 33 R.E. 2019].

According to Order XXXIX Rule 1(1) of ***Cap 33*** R.E. 2019 (*supra*) the memorandum/petition of appeal should be accompanied by a copy of the decree appealed from. Therefore, it is mandatory to attach impugned decree in the petition for an appeal from DLHT exercising its original jurisdiction.

It was deposed and submitted by the respondent that the judgement and decree were ready for collection 14 days after the date of judgement. That she collected her copy. On his part the applicants inform this court that they were supplied with the copy of judgement and decree on 13.09.2022 and 11.10.2022 respectively. The 7th applicant, in his affidavit, attached payment documentation for the said collections whereas no proof was attached on part of the respondent.

However, the affidavit supporting the application contains no evidence as when the applicant requested to be supplied with the copies of judgement and decree. Without the affidavit of the chairman/clerk of the tribunal the court is left with no evidence as to when the decree was ready for collection. In law, if a third party is



said to be the source of information or evidence, he should depose as such. See cases of ***Narcis Nestory v Geita Gold Mining Ltd***, Misc. Labour Application No. 13 of 2020; ***NBC Ltd v Superdoll Trailer Manufacture Co. Ltd***, Civil Application No. 13 of 2002; ***Awadh Abood (As Legal personal representative of the Estate of the Late Sklehe Abood Salehe) v Tanroads and AG***, Misc. Land Application. No. 53 of 2020 (all unreported).

However, both parties are in agreement that the copies were not ready on the date of judgement and that they were told to collect the same after 14 days. Assuming that they were ready for collection after 14 days, hence, the Tribunal was enjoined to certify the date when they were ready in line with Order XXXIX Rule 36 of the ***Civil Procedure Code***.

Henceforth, the point made by the applicants regarding late supply of the decree necessary for appeal will have merit depending on the second issue on account of every day of delay.

The Court now turns to the **second** ground. The affidavit supporting the application discloses nothing regarding the time spent from 11.10.2022 when allegedly they were given copy of decree until 27.10.2022 when they filed instant application online. The duration in between constitutes 16 days not accounted for by the applicants.

It is a cardinal principle that one applying for extension of time must account for every day of delay. In the case of ***Hassan Bushiri v Latifa Mashayo***, Civil Application No. 3 of 2007 (unreported), the Court ruled that, “delay, **of even a single day has to be accounted for** otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken”.

Other cases in line with the foregoing holding, are ***Yazid Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & Another***, Civil Application No. 412/04 of 2018; ***Sebastian Ndaula v Grace Rwamafa (legal personal representative of Joshua Rwamafa)*** Civil Application No. 4 of 2014; ***Dar es Salaam City Council v Group Security Co. Ltd***, Civil Application No. 234 of 2015; ***Muse Zongori Kisere vs. Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019; ***Ally Mohamed Makupa v Republic***, Criminal Application No. 93/07 of 2019; and ***Lyamuya Construction Company Ltd. v Board of Registered Trustee of Young Women’s Christian Association Of Tanzania***, Civil Application No. 2 of 2010 (all unreported).

In the submissions of the applicants, it is accounted that the said days were spent by the applicants to find legal assistance as they are

layman. This line of argument should not detain me. The stance I take hereof is based on three reasons; **firstly**, submissions are not evidence. Reasons for delay ought to have been deposed in the affidavit. It has been stated in numerous cases that submissions are not evidence. Examples of such cases, are ***The Registered Trustees of the Archdiocese of Dare Salaam v The Chairman Bunju Village Government and 11 Others***, CoA Civil Appeal No. 147 of 2000 (unreported); and ***Ison BPO Tanzania Limited v Mohamed Aslant***, CoA Civil Application No. 367/18 of 2021 (unreported). It is, thus, obvious that a matter of fact cannot be proved in the course of making submissions in court.

Secondly, time spent for seeking legal assistant or advocate does not constitute a good cause for extending time. This position of law, has been laid down in our jurisdiction over time. See, for example, the case of ***Ally Kinanda and 3 others vs. Republic***, Criminal Application No. 1 of 2016 (unreported) where it was decided that pursuit of legal service is not a sufficient reason to support an application for extension of time.

Thirdly, looking at court records, the applicants neither drew nor filed this application and written submissions with the purported assistance of advocate(s). On record, the application was drawn and

filed by the 7th applicant. The submission in chief and rejoinder submissions were filed by applicants, jointly. In addition, the affidavit supporting the application was sworn before the magistrate. Therefore, nothing in this matter portrays that the applicants spent some times looking for legal assistance as they allege.

In the fine, the applicants failed to account for 16 days from the date they were supplied with the decree to the date of filling this application. Hence, they have not demonstrated a sufficient cause to warrant extension of time. In consequence, the application lacks merit and it is accordingly dismissed. Given circumstances of this matter, I order that each party should bear own costs.

It is so ordered and right of appeal is fully explained to the parties.



C.K.K. Morris

Judge

April 18th, 2023