

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. LAND APPLICATION NO. 13 OF 2017

(Originating from Geita District Land and Housing Tribunal Land Application No, 27 of 2016).

JOHN CHUMA APPLICANT

VERSUS

PASTOLI LUBATULA.....1ST RESPONDENT
FRANSISCO LUTOBELA.....2ND RESPONDENT
DAVID VICENT3RD RESPONDENT
COSMAS MSEKWA.....4TH RESPONDENT

RULING

26/11/2018 & 31/01/2019

Gwae, J

In the District Land and Housing Tribunal for Geita at Geita, the applicant herein filed a dispute against the respondent praying for among other things a declaration that he is lawful owner of the suit land. In the conclusion, the DLHT through its judgment dated 30th September 2016 found that the applicant was not a lawful owner except late Maria Wanzala and late Hamis Wanzala who sold the suit land to the respondents.

Seemingly, the applicant was not satisfied with the decision of the trial tribunal, desired to challenge it but found himself out of the prescribed

period set for appealing to this court, thus the present application for extension of time to file an appeal out of time. The applicant has brought the application under section 14 (1) of the Law of Limitation Act, Cap 89 Revised Edition, 2002 and according to the record this application was duly filed on 17th January 2017.

One of the reasons given for delay through the applicant's affidavit is time spent waiting for supply of copies of judgment and proceedings of the trial tribunal vide request letter dated 25th October 2016 and that he was eventually supplied with the same on 23rd November 2016. Having been supplied with necessary documents, the applicant looked for legal assistance from TLS which assigned him an advocate vide TLS's letter dated 25th November 2016 and on 10th January 2017 the applicant submitted all the documents to the assigned advocate who advised him that the time of filing an appeal had already elapsed.

Resisting this application through their joint affidavit, the respondents stated that lack of financial resources is not ground for extension of time and that disclosure of an office of an advocate does not constitute an excuse.

At the hearing of this application, the applicant and respondents were represented by **Mr. Alfred Daniel** and **Mr. Kishosha** respectively.

Supporting the applicants' application, Mr. Daniel reiterated what is contained in the applicant's affidavit he however cited a judicial decision in **Stephen V. Dr. Mukisi** Labour Application No. 8 of 2009 where waiting for a legal aid was held to be a sufficient reason for extension of time.

On the other hand, Mr. Kishosha verbally argued that this application be dismissed due to lack of evidence to support the applicant's assertion as no court clerk's affidavit that has been produced or annexed, bolstering his submission, the respondents' counsel urged this court to make reference to a case of **Christopher Mtikila v. Jacob and 3 Others**, Civil case No. **278 of 1997** where this court stated that".

"Thus failure by the learned counsel to indicate the name of the court clerk who told him that the case would be re-assigned and was not before the trial court judge.....are mere allegations. I am sorry to say that court of law cannot act on allegation because to do so, the sky will be limit".

The learned counsel for the respondents went further contending that the applicant did not act diligently to pursue the intended appeal and that seven days are not accounted for.

Rejoining to the submission by the respondents' advocate, the applicant's advocate stated that supply of judgment and decree are basic rights of the litigants adding that the case of **Christopher** cited by the respondents' counsel is inapplicable in the present application.

I am not unsound that time requisite for obtaining certified copies of decrees and judgments are excludable in the computation of limitation of time in filing an appeal or any application as provided under section 19 (2) of the Law of Limitation Act, Cap 89 R.E, 2002 especially where attachment of a decree and or judgment appealed is mandatory requirement.

In our application, the applicant's delay from the date he requested for being supplied with certified copies of the judgment to the date he was supplied with the same (25/10/2016 to 23/11/2016) must be excluded; we thus remain with delays from 23/11/2016 to 19/01/2017 which bring about 57 days delay.

I am further aware that financial difficulties cannot constitute sufficient cause for extension of time to appeal or file an application for revision or review however in our case there is an issue of legal representation and efforts made thereto by the applicant.

It is my formed opinion that; the applicant in this case acted diligently to ensure that he secured legal services from TLS who could not promptly assign an advocate. In this case, the applicant had acted diligently as opposed to the case cited by the respondents' counsel of **Mjaifu Magele v. Bwendeko Matutu**, Application No. 37 of 2010 (unreported) this court (**Mruma**, J) at Mwanza where the applicant was noted to have not made follow ups even after he had obtained copies of judgment and proceedings.

It was also the contention by the respondents' advocate that there was a need of filing an affidavit of the said court clerk or disclosure of his name, it is my firm that an affidavit of material witness is necessary (**John Chuwa v Antony Ciza** (1992) T. L. R 223) but not in all cases. In our case, to my considered opinion an exchequer receipt for purchase of the certified copies of proceedings and judgment and the applicant's letter requesting for the same are self explanatory.

For the reasons stated herein above, I find this application is merited, the same is hereby granted. The applicant is given 14 days from the date of this order within which to file his intended appeal to the court. Costs of this application shall abide the results of the intended appeal.

It is so ordered.



A handwritten signature in black ink, appearing to read "M. R. Gwae", with a long horizontal line extending to the right.

M. R. Gwae
Judge
31/01/2019