

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. LAND APPLICATION NO.20 OF 2021

(Arising from the District Land and Housing Tribunal of Mwanza at
Mwanza in Land Application No. 150 of 2019)

FAUSTINE THEOBALD..... APPLICANT

VERSUS

CHRISTINA MREMA 1ST RESPONDENT

ILEMELA MUNICIPAL COUNCIL 2ND RESPONDENT

RULING

Date of Last Order: 15.04.2021

Date of Ruling: 16.04.2021

A.Z.MGEYEKWA, J

The applicant has filed an application for extension of time to appeal against the Judgment of the District Land and Housing Tribunal for Mwanza at Mwanza in Land Application No. 150 of 2019. The

application was supported by an affidavit sworn by Mr. Joseph Kinango. The first respondent challenged the application by filing a Counter-Affidavit deponed by Ms. Christina Mrema, the first respondent.

Following the global outbreak of the Worldwide COVID-19 pandemic (Corona virus), the hearing was conducted via audio teleconference whereas Mr. Kinango, learned counsel represented the applicant and Ms. Hidaya, learned counsel represented the first respondent. Mr. Ringia, learned Solicitor for the second respondent conceded to the application.

Mr. Kinango was the first one to kick the ball rolling. He urged this court to adopt his affidavit to form part of his submission. The learned counsel for the applicant stated that the applicant delayed to receive copies of judgment hence he found himself out time to file an appeal before this court. He went on to state that the judgment was delivered on 20th November, 2020 and the copies of judgment were certified on 22nd December, 2020. He added that the applicant received the certified copies on 15th February, 2021.

It was Mr. Kinango's further submission that the applicant was not negligent because after receiving the said copies, promptly on 18th February, 2021 the applicant lodged the instant application before this court. The learned counsel for the applicant complained that the delay was out of the applicant's control since the delay was caused by the tribunal. He went on to state that the law requires the application for extension of time to be accompanied by a copy of judgment. Mr. Kinango refuted that the copies were ready for collection on 22nd December, 2020 since the applicant made a follow up only to be informed that the copies were not ready.

In conclusion, Mr. Kinango beckoned upon this court to grant the applicant's application to file an appeal before this court out of time without costs.

Opposing the application, Ms. Hidaya was brief and straight to the point. She urged this court to adopt the second respondent's counter affidavit to form part of her submission. She argued that the copies of judgment were certified on 22nd December, 2020 and the first respondent collected the said copies in January, 2021. Ms. Hidaya

fortified her submission by referring this court to the certified copy which is attached in the applicant's application.

In conclusion, the learned counsel for the first respondent beckoned upon this court to dismiss the application for lack of merit.

Rejoining, Mr. Kinango reiterated his submission in chief and stated that even the second respondent collected the copies in January, 2021. Insisting, Mr. Kinango stated that they made several follow-ups but they were told that the copies were not ready.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge the intended notice of appeal to the Court of Appeal of Tanzania. The central issues for consideration and determination are whether or not the applicant has shown good cause to justify his application.

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase

'good cause' but the court consistently considers factors such as the length of the delay involved; the reason for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal.

There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v Amos David Kassanda & 2 others**, Civil Application No.48/17/2018 and the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

Similarly, in the case of **Lesero v Mwarabu** Civil application No. 10 of 2015 (2016) TZCA 10 the Court held that:-

"Granting application for extension is a discretionary power. This discretionary power, however, is judicial in nature and must be confined to the rules of the reason and justice..."

In the instant application, the applicant was required to show good cause of his delay and account for each day of delay. To resuscitate the applicant's request for extension of time, the applicant's Advocate submitted that the applicant has adduced sufficient reasons for his delay. On the other hand, Mr. Ringia, learned Solicitor conceded to the application while Ms. Hidaja, learned counsel for the 1st respondent opposed the application for the main reason that the copies were certified on 22nd December, 2020, therefore, the same was ready for collection since December, 2020.

Reading the applicant's affidavit, specifically paragraphs 5, 6, 7, 8, and 9, the same contains a series of attempts taken by the applicant to collect a copy of judgment. Mr. Kinango has submitted that the delay was out of the applicant's control because the certified copies were issued to the applicant on 25th February, 2021. The records reveal that the judgment was delivered on 20th November, 2020, and on 10th December, 2020 Mr. Kinango wrote a letter to the tribunal requesting

for copies. The judgment was certified on 22nd December, 2020 and the applicant filed the instant application on 18th February, 2021. In my view, the applicant has shown efforts that he intended to file an appeal by writing a letter to the tribunal requesting the copies. The delay to supply the copies from the date when the judgment was delivered prevented the applicant to file his appeal within time. In the case of **Rajabu Zahuya v Mkonge Hotel Ltd** Lab. Div. Tanga Revision No. 26 of 2013, it was held that:-

"...what is required for the decision maker in such application is to assess whether the reason advanced would have prevented a reasonable person from acting timely."

Applying the above authority, and under the circumstances, I am of the considered view that since none of the parties collected the copies of judgment in December, 2020 I think it is prudent to consider the applicant's reasons for the delay to file an appeal within time. Therefore, I am satisfied that the applicant has adduced sufficient reason for his delay and it is in the interest of justice the applicant's application for extension of time to file an appeal before this court is

granted. The applicant is required to file the intended appeal within 21 days from the date of delivery of this ruling.

Order accordingly.

Dated at Mwanza on this 16th April, 2021.


A.Z.MGEYEKWA

JUDGE

16.04.2021

Ruling delivered on 16th April, 2021 via audio teleconference and both parties were remotely present.


A.Z.MGEYEKWA

JUDGE

16.04.2021

