

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

AT MWANZA

MISC. LAND APPLICATION NO. 180 OF 2019

(Arising from Land Appeal No.11 of 2018 of High Court of Mwanza)

ABDUL MBUNE KIBIBI APPLICANT

VERSUS

1. DEBORA SABATHO

2. THE BRANCH MANAGER SIDO

3. HUVENALIS BWANA MAUMAU

} **RESPONDENTS**

RULING

Last Order: 17.03.2020

Ruling Date: 17.03.2020

MGEYEKWA, J.:

The applicant has instituted an application which is brought under section 47 (2) of the Land Dispute Courts Act, Cap. 216 as amended by the

Written Laws (Miscellaneous Amendments) Act No.3 of 2018, Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E. 2002] and Rule 10 of the Tanzania Court of Appeal Rules, 2009. The order sought is for extension of time to file a notice of appeal to the Court of Appeal of Tanzania, leave to appeal to the Court of Appeal. The application which is strongly resisted by the respondents is supported by the applicant's own affidavit.

When the matter was called for hearing before me, the applicant and the respondent appeared in person, unrepresented.

At the hearing of the application, the applicant submitted that he delayed filing an appeal because he falls sick. He prayed for this court to adopt his affidavit and form part of his submission. In conclusion, he prays this court to grant his application and enable him to file an appeal to the Court of Appeal.

In riposte, the 2nd respondent argued that the applicant has not given good reasons for his delay to file his appeal. He said that this court delivered its judgment on 18.09.2019 and the applicant was required to file a Notice of Appeal and file his appeal within 30 days. He valiantly argued

that the applicant's ground that he was sick is not justifiable because the Hospital receipt was not endorsed. It was his further argument that the applicant collected a copy of the judgment on 13.08.2019 thus he had 5 days to file his appeal but he did not file it his appeal within time. He prays this court to dismiss the applicant's application with costs.

On her part, the 1st respondent had not much to say; she objected the submission of the applicant for the reasons that the 30 days to file an appeal lapsed thus saying that he was sick is an afterthought. She went on lamenting that the applicant always delays court process. In conclusion, she prayed for this court to dismiss the applicant's application.

In his brief rejoinder, the applicant stated that the Doctor confirmed that he was sick and was hospitalized. He ended by saying that the respondents' arguments are baseless the same be disregarded.

Having heard both parties' submissions for and against the application, there is no gainsaying that the power to extend time is at the court's discretion. It is equally not in dispute, and indeed it is settled law that such discretion must be exercised judiciously on the basis of material placed before the court for its consideration. One of such materials is, as I

understand the law, is that an applicant must not only demonstrate reasons for the delay but also he must account for each day of delay in taking a particular step in the proceedings. As it was held in the case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) which was delivered in May, 2019 and the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) which had held that:-

"Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."

Guided by the above authority, the applicant was required to account for each day of delay. It is trite law that appeals which falls under the provision of section 41 (2) of the Land Disputes Courts Act, Cap. 216 as amended by the Written Laws (Miscellaneous Amendments) (No.2) 4 Act, 2016 (No. 4 of 2016) for appeals originating from the District Land and Housing Tribunal to the High Court, time for filing such appeals is 45 days. It should be known that days start to run from the day when the judgment was delivered, in the instant case judgment of this court was delivered on

18.07.2019 and the applicant filed his present application on 10.10.2019 approximately 44 days late.

I have considered that the applicant falls sick and was hospitalized for 4 days from 21.07.2019 to 24.07.2019 at Kinesi Health Center then he was discharged. Again, he was hospitalized for 5 days from 09.08.2019 to 13.08.2019 which makes a total of 9 days the same is supported by a letter from Kinesi Health Center. It is a trite law that an applicant must account for each day of delay, the applicant was supposed to account for the remaining 35 days on which the applicant has stated that he delayed to file an appeal because he was waiting for copies of court proceedings and drawn order. In my view that is not a good reason because the notice to appeal was supposed be filed immediately after the delivering of the judgment and the same does not require one to attach copies. Additionally, the applicant did not append any letter which shows that he took efforts to remind the court to provide him with the said copies. Therefore it is clear that in the instant application, the applicant has not accounted for each day of delay.

Additionally, in order to move the court to grant leave, the applicant must move the court by citing a relevant provision. In the present application the applicant has not cited any provision to move this court to grant him leave to appeal to the Court of Appeal. The jurisdiction of this Court to grant leave to appeal is stipulated under section 5(1) (c) of the Appellate Jurisdiction Act Cap. 141, failure to cite the same this court cannot determine the applicant's prayer.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by granting the applicant's application. I am satisfied that the Applicant has not disclosed sufficient cause to appeal out of time. Therefore, his application is accordingly dismissed without costs.

Order accordingly.

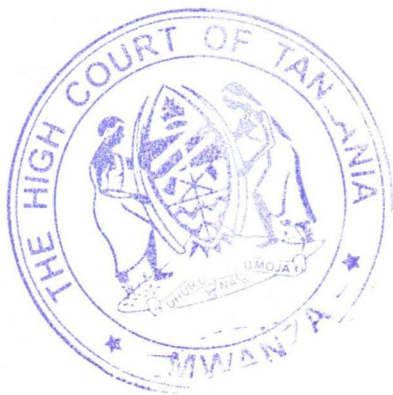
Dated at Mwanza this 17th day of March, 2020.


A.Z.MGEYEKWA

JUDGE

17.03.2020

Ruling delivered on 17th day of March, 2020 in the presence of the appellant, the 1st respondent, and the 2nd respondent.



A handwritten signature in blue ink, appearing to be "A.Z. MGEYEKWA".

A.Z.MGEYEKWA

JUDGE

17.03.2020