

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISC. LAND APPLICATION NO. 37 OF 2020

*(Arising from the Judgment of the District Land and Housing Tribunal for Mara at
Musoma in Appeal No. 41 of 2011)*

ESTER MATUTU APPLICANT

VERSUS

BONIPHACE F. ODEMBA RESPONDENT

RULING

27th August and 28th September, 2020

KISANYA. J.:

This Court has been moved under section 38(1) of the Land Disputes Courts Act, 2002 to be pleased to extend time to appeal against the judgment of the District Land and Housing Tribunal (the Tribunal) in Appeal No. 41 of 2011. The said judgment was rendered on 27/07/2012.

Pursuant to the affidavit in support of the application, the applicant applied for a copy of judgment on 28/07/2012 in order to appeal lodge her appeal. The said copy was supplied to her on 14/11/2019. She then preferred Land Appeal No. 15 of 2019 which was filed before this Court on 18/11/2019. The said appeal was struck out on 15/05/2020 for being filed out of time. Determined to challenge the impugned judgment, the applicant filed an application for extension of time to appeal. Again, her application could not be determined on merit. It was struck out on 29/06/2020 for being supported by an affidavit

attested by unqualified person. Still firm to contest the said appeal, the applicant has filed the present application.

When this matter came for hearing, both parties appeared in person, legally unrepresented. Submitting in support of the application, the applicant pointed out the delay in obtaining the copy of judgment as the cause for her failure to appeal in time. She indicated that, it is the copy of judgment which could have guided her to write the petition of appeal. The applicant conceded that, the letter requesting for the copy of judgment was not appended to the affidavit. However, she contended that the letters to that effect were written in 2012, 2018 and 2019. She therefore urged the Court to grant her the leave to appeal out of time.

It was replied by the respondent that, the applicant had not advanced a sufficient cause for the delay. Adopting his counter-affidavit, the respondent argued that, the applicant had not proved to have requested for the copy of judgment. It was also deposed in the counter-affidavit that, there was no evidence to show that the copy of judgment was delayed because the trial Chairman had been suspended from his employment. Thus, the respondent asked the Court to dismiss the application with costs.

In her rejoinder, the applicant reiterated that, she delayed to appeal in time due to delay in obtaining the copy of judgment.

Having considered the rival submissions by the parties, it is my duty to consider the merit or otherwise of this application. This matter is based on section 38(1) of the Land Disputes Courts Act, Cap. 216, R.E 2019 which requires a party aggrieved by a decision of the Tribunal in the exercise of its appellate or revisional jurisdiction, to appeal to this Court within sixty days after the date of the impugned decision.

However, the said time limitation can be extended by the Court if there is good and sufficient cause. The term “good and sufficient cause” has not been defined in the Land Disputes Courts Act. It is determined basing on the circumstances of each case. This stance was taken by the Court of Appeal in **CITIBANK (Tanzania) Ltd. v. T.T.C.L., T.R.A. & Others**, Civil Application No. 97 of 2003 (unreported).

It is settled law that the applicant must be able to prove that, the delay was caused by the reason beyond his or her control. In exercising its discretionary powers on whether to grant the application or not, the Court takes into account different factors including, the length of delay and the reason for the delay to mention but a few. See the case of **Henry Muyaga vs Tanzania Telecommunication Company Ltd**, BK Civil Application No. 8 OF 2011, CAT at Bukoba (unreported) where it was held that:

The discretion of the Court to extend time under Rule 10 is unfettered, but it has also been held that, in considering an application under the rule, the Courts may take into consideration, such factors as, the length of the delay, the reason for the delay, the chance of success of the intended appeal, and the degree of prejudice that the respondent may suffer if the application is granted.

In the present matter, it is undisputed that the judgment subject to this application was delivered on 27/7/2012 in the presence of both parties. It is not disputed further that, it took the applicant more than seven years to lodge her appeal which was filed before this Court on 18.11.2019. At any rate, the grant or otherwise of this application depends on whether the applicant has advanced good and sufficient for the seven years of delay.

The main reason advanced by the applicant is delay in obtaining the copy of judgment. This reason is reflected in paragraphs 5 and 6 of her affidavit which reads as follows:

“5. That, after delivering the judgment, I wrote a letter applying for copy of judgment on 28th day of July, 2012 so as I would prepare reasonable appeal. However, the said copy of judgment was ready and was supplied to me on 14/11/2019.

6. That, the delay in supplying copy of judgment was due to the fact that the Chairman who heard and determines it namely Hon. Ilanga M. T. was suspended from his employment and his judgment were not signed. Then after long time follow up the said judgment was signed on 14/11/2019 when I took it from the tribunal. The district land and housing tribunal informed me that they give me 25 days to appeal because it was not my fault.”

As rightly argued by the respondent, there is no proof as to the date when the copy of the impugned judgment was requested for by the applicant. Since this was the sole ground or reason for the delay, the applicant was expected to attach or submit the letter (s) submitted to the Tribunal requesting of the said copy of judgment. Further, the applicant has not proved that, the Tribunal acknowledged to have delayed in availing her the copy of judgment as deposed in paragraph 6 of the affidavit. The applicant deposed further that, the copy of judgment was signed on 14/11/2019. But, the copy of judgment attached to the application shows that it was delivered and signed by Ilanga M.T. (Chairperson) on 27/07/2012. Therefore, the applicant has not proved that, the judgment was signed on 14/11/2019 when she collected it from the Tribunal. In absence of evidence on the efforts made by the applicant in obtaining the copy of judgment,

the reasons that the seven years of delay to appeal were caused by the delay in obtaining the said copy fails.

In view of the above state reasons, the application is hereby dismissed for want of merit. The Court makes no order as to costs due to the circumstances of this matter.


DATED at MUSOMA this 28th day of September, 2020.




E. S. Kisanya
JUDGE

Court: Ruling delivered in Chambers this 28th September, 2020 in the presence of the applicant and the respondent. B/C Mariam present.




E. S. Kisanya
JUDGE
28/09/2020