

**IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA**

MISCELLANEOUS LAND APPLICATION NO 54 OF 2020

JOSEPH CHACHA MAGABE_____APPLICANT

VERSUS

THE REGISTERED BOARD OF TRUSTEES OF CCM_____RESPONDENT

(Arising from the decision and orders of the district land and housing tribunal for Tarime at Tarime, Hon. Philip Chairperson, in land application No. 20 of 2016 dated 15.11.2019)

RULING

4th & 22nd January 2021

GALEBA, J.

This is an application for extension of time within which to file an appeal arising from the decision of the District Land and Housing Tribunal (the DLHT) for Tarime sitting at Tarime in land appeal no 20 of 2016. In that decision, the DLHT declared the respondent to be the lawful owner of the disputed Plot no 120 measuring 30 meters by 17 meters located at Buhemba area, Tarime Township in Mara region. At the same time it declared the applicant a trespasser to that land and ordered him to remove all developments he might have erected on the land and deliver vacant possession of it to the respondent as soon as possible following delivery of the judgment.

As the applicant was aggrieved by that decision, he filed land no 15 of 2020, but as it was filed out of time, the appeal was struck out on 07.08.2020 by this court. This application is therefore filed in order to obtain the extension of time so that the applicant can be able to file a proper appeal.

When this application came up for hearing, it was ordered that it be disposed of by way of written submissions, which submissions were filed as ordered.

According to the applicant, although the judgment was passed on 15.11.2019, but he managed to get its copy on 08.03.2020. As per the applicant's affidavit and submissions, he was able to file land appeal no 15 of 2020 on 16.03.2020. In other words it is the argument of the applicant that the delay to file the appeal was caused by the delay of the DLHT to supply him with a copy of the judgment he intended to challenge. In the applicant's submissions, he argues also that it is important that this application be granted because, the DLHT decided the matter against him but it was *res judicata*, as matter had been decided already. This point raised an issue of illegality.

In reply to those points, Mr. Onyango Otieno, learned advocate for the respondent submitted that when this court found out that the appeal was filed out of time it ought to have dismissed it and cited the decisions of **Mariam Samburo v Masoud Josh and others**, Civil Appeal no 109 of 2016 and **Abdi Rahman Mohamud Darma v Hersi Warsama Mohamed**, Land Appeal no 01 of 2018. Counsel submitted further that this application is *functus officio* and that extension must be refused because the applicant has failed to explain each day of delay.

Let me say something about the submissions of counsel for the respondent. Except for the final point of explaining each day of delay, counsel for the respondent is like challenging this court's order that struck out the applicant's land appeal no 15 of 2020 on 07.08.2020. If the respondent desired to challenge that order, it is not procedural to do that in an application filed by the adverse party for extension of time. It is also legally impossible for this court to take any remedial step against its own order or decision. In any event, an order striking out a matter does not bar the losing party from approaching the same forum for the remedy in the struck out proceeding. In other words, this application is a competent proceeding before the court and issues that this court was supposed to

dismiss the appeal instead of striking it out, is not a valid response to the present application. With those observations and submissions of parties, this court is now comfortable to consider the submissions and come up with an appropriate decision; to grant the extension sought or to refuse it.

The law applicable for limiting time to file an appeal from the DLHT when exercising original jurisdiction is **section 41(2) of the Land Disputes Courts Act [Cap 216 RE 2019]** (the LDCA) which provides for forty five (45) days.

In this matter there are five (5) periods. The ***first period*** is from 15.11.2019 when the judgment was delivered, to 04.03.2020, when the judgment was ready for collection. For this period the explanation is that the applicant had no judgment and it is evident that the copy of the judgment was certified as a true copy of the original on 04.03.2020. The ***second period*** is from 04.03.2020 to 16.03.2020 when the applicant filed land appeal no 15 of 2020. The explanation for this lapse of time is that the applicant had 45 days to file an appeal from when he got the judgment so he was in time because he filed it in just 12 days. The ***third period*** runs from 16.03.2020 to 07.08.2020 when the incompetent appeal was pending and finally struck out. The delay between these dates is legally

referred to as a technical delay as the applicant was *bona fide* in court prosecuting the appeal albeit an incompetent one. This period is excusable. The *fourth period* of 5 days is between 07.08.2020 and 13.08.2020 when this application was submitted to court for filing. These days, 2 of which were a Saturday and a Sunday seem reasonable time to prepare this application and submit it on 13.08.2020 otherwise we would be expecting the applicant to have filed the application the next day following the striking out of the appeal.

I therefore find that the applicant has sufficiently explained or has sufficient reasons to explain each day of the delay to file the appeal and I do not find any useful reason to consider issues of *res judicata*.

Based on the above discussion, this application is granted with no orders as to costs and the applicant is permitted to file an appeal in thirty (30) days from the date of this order.

DATED at MUSOMA this 22nd January 2021



Z. N. Galeba
JUDGE
22.01.2021