

**IN THE HIGH COURT OF TANZANIA  
(MOROGORO DISTRICT REGISTRY)  
AT IJC MOROGORO  
MISC. CIVIL APPLICATION NO.56 OF 2023**

**HAMIS R. PAZI..... APPLICANT**

**VERSUS**

**SAMSONI RICHARD MLEWA ..... RESPONDENT**

**RULING**

**DATE OF RULING- 10 /01/2024**  
**LATIFA MANSOOR J**

Through the legal service of Mr. Anord Katunzi, the Applicant Hamis R. Pazi, preferred the instant application by way of chamber summons made under Section 41(2) of the Land Disputes Courts Act (Cap.216 R.E 2019) seeking orders as hereunder:

1. That this Honourable Court be pleased to extend time for filling the notice of intention to appeal.
2. That this Honourable Court be pleased to extend time for filling an appeal out of time.



3. Any other order or relief(s) this Honorable Court may deem fit to grant.

With the leave of the Court, the hearing of the application was canvassed by way of oral submission. Both parties appeared personally and unrepresented.

Submitting in support of the application, the applicant highlighted that, he wanted to appeal against the decision of Kilosa District Land and Housing Tribunal, but he delayed as he claimed that the tribunal delayed to furnish him with the copies of judgement and proceedings. Highlighting his efforts to obtain the same he contended that, he severally applied to be supplied with the same unsuccessfully and mentioned the letters he wrote to the tribunal on 01/11/2021, 22/12/2021 and 08/11/2021. He demonstrated further that he was supplied with copies of judgement on the 12/07/2022 and started the process of filling the appeal to the High Court Morogoro on 14/07/2023 where he was given the control number and he paid on 28/07/2023.

Responding to the applicant arguments the respondent contended that, the applicant filed the case before Hon. Judge Chaba which was

dismissed. He submitted further that on April he applied for execution and the applicant was summoned on 30/06/2022 to appear before the Tribunal for the hearing of the execution case.

On his brief rejoinder the applicant conceded to the fact that his appeal was dismissed and he asserted that he was told to file an application for extension of time and he did so.

Having considered the parties' submissions, the issue which calls for Court's determination is whether the applicant has shown sufficient cause to warrant the extension of time to lodge an appeal sought. Considering the case at hand, the applicant has submitted that, the DLHT delivered the judgment on the 1<sup>st</sup> November, 2021 and he was served with a copy of the said judgment on the 12<sup>th</sup> July, 2022 as shown in paragraphs 2 and 4 of the affidavit. He delayed filing the appeal for almost six months from the date the Judgement of the District Land and Housing Tribunal was delivered. Time for filing appeals from the District Land and Housing Tribunal to the High Court are prescribed under Section 41(2) of the Land Disputes Courts Act, Cap 216 R: E 2019;

According to Section 41 (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019], the law says, appeals of matters originating from the District

Land and Housing Tribunal must be filed within forty-five (45) days from the date of the Judgement. It reads thus:

**41.(2)** An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.

From the foregoing provision of the law, the time to appeal to the High Court of Tanzania, Land Division is forty-five (45) days from the date of judgment. It is clear that Forty-Five Days prescribed under the law had long passed as the District Land and Housing Tribunal pronounced the judgment on 01/11/2021, the applicant ought to have filed the appeal within 45 days from the date the judgement was delivered which would have been on the 15<sup>th</sup> December, 2021. If the law allows exclusion of time, and that the time of obtaining copies of judgement and proceedings is excluded from counting the 45 days' limit, then, since the copies of Judgement and Proceedings were ready for collection on 02/06/2022, it means that the time to appeal to this Court expired on 15/08/2022 and

thus the applicant by the time he filed the instant application on the 31/07/2023 he delayed for almost 196 days.

According to section 41(2) of the Land Dispute Courts Act (Cap 216 R.E 2019) upon which this application is predicated, an applicant has to exhibit sufficient cause for the delay before the Court can exercise its discretion to grant it. However, what constitutes sufficient cause has not been defined, rather it depends on various factors as deliberated in various

cases. Amongst the factors to be considered were stated in the case of

**Lyamuya Construction Company Limited v. Board of Registered**

**Trustee of Young Womens Christian Association of Tanzania, Civil**

Application No. 2 of 2010, **these** are: -

- to account for all period of delay;
- the delay should not be inordinate;
- the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;
- and
- the existence of a point of law of sufficient importance such as the illegality of the decision sought to be appealed against;

The major reason for delay advanced by the applicant as indicated in the affidavit is that he was making a follow up to obtain the copy of the impugned judgement and that he was prevented by financial constraints.

As to the issue of delay to be supplied with the copies of judgement, in the matter under consideration, as hinted earlier on, the record of appeal shows that the impugned judgment was delivered on the 1/11/ 2021.

Immediately on the same day, the applicant applied to be supplied with the copy of the judgment. The copies were certified, ready for collection on 02/06/2022. The instant application was presented for filing 196 days later, that is on 17/07/2022.

In his oral submission, the applicant claimed to have been supplied with the copies of judgment on 12/07/ 2022. However, there is no evidence on record to substantiate the fact that, he was indeed supplied with the impugned decision on the said date. In my view, such piece of evidence was crucial in the circumstance, given the fact that the impugned decision

was certified and stamped on 2<sup>nd</sup> June, 2022. Hence, for the purpose of computation of the time available to appeal and to understand the extent he was delayed to be supplied with the impugned judgement, it was expected that, the applicant had to produce evidence exhibiting that the copy of the impugned decision was supplied to him on the 12<sup>th</sup> July, 2022

for him to satisfy this court that the delay to be supplied with the copies of judgement was to the extent he claimed.

From the above observation, it is my considered opinion that, the oral submission by the applicant that, he received the copies of judgment and decree on 12<sup>th</sup> July, 2022 is worthless and unfounded as it was observed by this court in the case of **Star System International Co. Limited vs. Agatha Cyril Nangawe**, Civil Appeal No. 10 of 2015 (HC-Tabora) (unreported), where it was stated that:

*"It must also be born in mind that what has been made by the applicant's counsel before me are mere submissions (as opposed to affidavits) to the effect that the time was necessary for the applicant to obtain the copy of decree, but such submissions do not suffice for the purposes of a legal proof. Our law is clear that mere submissions in court are not evidence hence they are incapable of proving any fact for the court to rely on in making its decision, see the Court of Appeal of Tanzania decision in the case of The Assistant Imports Controller (B. O. T) Mwanza v. Magnum Agencies Co. Ltd. Civ. Appeal No. 20 of 1990 At Mwanza. "[Emphasis is Mine].*

From the foregoing, since the applicant has failed to satisfy this court as to the date he obtained the copies of the decision, he has therefore failed to prove the extent which he was delayed to be supplied with the copies of judgement and thus I can't find it as the sufficient reason to warrant this court to exercise its discretion.

As regards the issue of financial constraint, having examined the matter closely, I have noted that; the applicant is trying to throw the blame to the registry officer and the office of Deputy Registrar. That if the bill would have been generated properly, he could afford it and he could not have been late. With respect, I don't agree with him. I think it was important to bring affidavits from the office of the Registrar to show that the delay was caused by his office. In the absence of evidence from that office, it has been difficult for me to believe her. Thus the ground is baseless and dismissed.

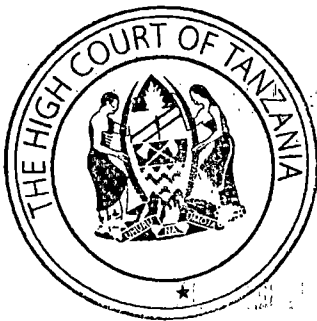
In no uncertain terms at this point the applicant has neither adduced the sufficient cause nor successfully accounted for over one hundred and ninety-six (196) days delay in filing the present application. This is, certainly, demonstrative of inaction and unqualified lack of diligence on




the part of the applicant in taking essential steps towards pursuing the intended appeal. There being no material basis upon which to ignore such inordinate delay, I am compelled in the circumstance to find, as I hereby do, that good cause has not been shown by the applicant to justify an order for the extension of time sought.

Accordingly, the application is dismissed with costs to the respondent

**DATED AND DELIVERED AT MOROGORO THIS 10<sup>TH</sup> DAY OF  
JANUARY, 2024.**



  
**(LATIFA MANSOOR J)**  
**JUDGE**  
**10<sup>TH</sup> JANUARY 2024**