

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 238 OF 2017

*(Originated from the decision of the District Land and Housing Tribunal of Kilosa in
Civil Application No. 33 of 2016)*

CHRISTINA HASSANI1ST APPLICANT
HADIJA KIKWETE 2ND APPLICANT
MWADAWA LUKWAMBE 3RD APPLICANT
VERSUS
SULAGU S.B. BISHENYARESPONDENT

Date of last Order: 12/12/2017

Date of Ruling: 07/02/2018

RULING

Makuru, J.

This application was presented for filing on the 27th day of March, 2017. It has been filed under section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2002 and section 95 of the Civil Procedure Code, Cap 33 R.E. 2002. The Applicant is praying that he be allowed to file an appeal out of time. The application is supported by a joint affidavit sworn by the Applicants.

When the application was called on for hearing parties appeared in person unrepresented. Being no objection from the Respondent, the Applicant's prayer to dispose of the application by way of written submission was granted on 12/9/2017. Parties complied with the court's order of filing their written submission.

In their joint written submissions drawn *gratis* by the Women's Legal Aid Centre (WLAC), the Applicant basically stated that the delay was occasions by the District Land and Housing Tribunal for Kilosa District which did not furnish them with certified copies of ruling, drawn order and proceedings of Misc. Civil Application No. 33 of 2016 delivered on the 2nd day of November, 2016. After being aggrieved by the said decision, the Applicants alleged that they wrote a letter requesting for the above stated documents on the same day the ruling was delivered. According to them, they were furnished with only a copy of Ruling on the 25th day of January, 2017.

After consulting a lawyer from WLAC for legal assistance to prepare the appeal, they contended that they were informed that the 60 days to appeal expired on the 2nd day of January, 2017. Hence, the available remedy was to apply for extension of time to appeal to this court

It was their contention that the delay to be supplied with copies of judgment, decree and proceedings amount to sufficient cause for extension of time to appeal out of time. To support their argument, they cited the case of **Benedict Mumello Vs Bank of Tanzania** Court of Appeal Civil No. 12 of 2002 (unreported). Unfortunately, the said decision was not attached.

To substantiate their submission they also referred to **Article 107 A (2) (e) of the Constitution of the United Republic of Tanzania, 1977 as amended** for the need of the court to dispense justice without being tied up with technicalities which may obstruct dispensation of justice. In the

same line, they also referred to the case of **South British Insurance Ltd Vs Mohamed Taibje** (1973) E.A. 210 whereby it was held that:

“In deciding appeals a fair court endeavors not allow technicalities to cause a failure of justice but rather rocks to the substance of the matter.”

From what has been stated above, they submitted that they have advanced sufficient reasons for the application to be granted and that there is a likelihood of success of the intended appeal.

On the other side, the Respondent submitted that this application hinges mainly on two points. That is the District Land and Housing Tribunal for Kilosa District failed to supply copies of Ruling and its decree in time and the likelihood of success.

As regards failure to be furnished with copies of ruling and decree in time, he argued that it is not in dispute that the Applicants received a copy of the ruling after 60 days. He further raised his concern on whether it was proper for the Applicant to cite both section 38 (1) of the Land Disputes Courts Act and section 14(1) of the Law of Limitation Act as enabling provisions. In respect of likelihood of success, he mainly argued that the appeal has no clear chance of success.

Before going into the merits of the case, it is appropriate to comment on the concern raised by the Respondent. In the course of their submission the Applicants referred to both section 38(1) of the Land Disputes Courts Act and Section 14 (1) of the Law of Limitation Act. As the proper

provision, section 14(1) of the Law of Limitation Act has been cited, I am of the view that the superfluous provision cited does not occasion any injustice. Hence, the preliminary objection which was belatedly raised is overruled.

After a thorough perusal of the submissions, it is not in dispute that the time to file an appeal in this case had expired as stipulated under section 38 (1) of the Land Disputed Courts Act. The said section provides that:

*"38 – (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, **may within sixty days after the date of the decision or order, appeal to the High Court (Land Division).**"*
Emphasis is mine.

The law is clear that the appeal should be filed within sixty days after the date of the decision or order. There is no provision of law which requires the Applicants to attach copies of judgment, decree and proceedings.

Section 38(2) of the same Act further provides that the appeal shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision or order of which the appeal is brought. Under subsection (3), the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal to the High Court (Land Division). Thus, it is the duty of the District Land and Housing Tribunal and not the Applicant/Appellant to forward the proceedings, including the judgment and decree, to the High Court.

From what has been stated above, the alleged delay for the Applicant to be furnished with copies of judgment and decree cannot be said to be sufficient cause as it is not a legal requirement.

As regards chances of success, there is no evidence to back up this allegation. I agree with the Respondent's submission that "*mere bold statement that there is a chance of success without pointing out where the chance lies should not be accepted.*"

From the above stated reasons, the application is dismissed with costs.


C.W. Makuru
JUDGE
07/02/2018

Court: Ruling delivered in court this 7th day of February, 2018 in the presence of the 1st Applicant and the Respondent and in the absence of the 2nd-3rd Applicants. Right of Appeal explained


C.W. Makuru
JUDGE
07/02/2018