

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

**MISC. LAND CASE APPLICATION NO. 398 OF 2020**  
*(c/f Appeal Case No. 190 of 2019 from the District Land and Housing Tribunal for Kilombero/Ulang District)*

**ERASTO KULANGA.....APPLICANT**

**VERSUS**

**REHEMA KILIENYI.....RESPONDENT**

**RULING**

*Dated: 23<sup>rd</sup> & 30<sup>th</sup> June, 2021*

**J.M. KARAYEMAHA, J.**

A brief history of this matter is that in the Ward Tribunal of Mngeta Ward in the District of Ifakara, the applicant, Erasto Kulanga unsuccessfully sued the respondent herein Rehema Kilienyi over a piece of land. The applicant complained that the respondent trespassed over his two different pieces of land located at Kidete village in Mngeta Ward. The applicant then appealed to the District Land and Housing Tribunal for Kilombero/Ulanga District at Ifakara. He did not succeed. As clearly alluded in his affidavit he was late to lodge his appeal to this court apart from having that intention. Now he is in this court seeking for an extension of time to file his appeal against the decision of the District Land and Housing Tribunal for Kilombero/Ulanga District out of time.

The application was brought under section 14 (1) and (2) of the Law of Limitation Act [Cap 89 R.E. 2019] and section 95 of the Civil Procedure

Code [Cap. 33 R.E.2019]. However, giving it a thought, the application ought to have been preferred under section 41 (1) of the Land Disputes Courts Act, Cap 216 R.E 2002. Under section 41(1) of the Land Disputes Courts Act the petition is filed in the High Court directly and the time limit is 45 days.

Acknowledging that the anomaly cannot prejudice the respondent's rights, I declare from the outset and where need arises, that I shall be guided by section 41 (1) of the Land Disputes Courts Act in my deliberations and the affidavit of the applicant Erasto Kulanga. In view of section 41 (2) the applicant had only 45 days to file the appeal.

The application is seriously opposed by the respondent through her counter affidavit dully filed in court.

When the application was called on for hearing on 23/6/2021, parties appeared in person. The applicant submitted that he was late to file his appeal because he applied with the copy of the ruling in time but the same was supplied when he was already time barred. He submitted that he got supplied with the same with the assistance of the District Commissioner but was already time barred.

The respondent on her reply submitted that the applicant was given a right to appeal but just left the tribunal's premises immediately after the delivery of the judgment without bothering to get a copy. To her the applicant acted negligently.

I have dispassionately examined the record of the trial tribunal, the chamber summons and the supporting affidavit and considered the submissions of the applicant. The question that needs determination in this

application is whether the applicant has demonstrated a good cause to warrant the court to exercise its discretion and enlarge the time prayed for.

My starting point that the discretion of the court for extending time under the proviso of section 41 (2) of the Land Disputes Courts Act, is wide ranging and discretionary. It is exercisable judiciously where a good and sufficient cause advanced by the applicant is considered rather than arbitrary or sentiment as was observed in the case of **Kambona Charles (as administrator of the estate of the late CHARLES PANGANI) v Elizabeth Charles**, Civil Application No. 529/17 of 2019 at page 5. The Court of Appeal was presented with glorious opportunity through which key guiding principles for application of the Court's discretion were propounded as follows:

*"some considerations that have consistently taken into account by the court in determining if "good cause" has been disclosed include the cause for the delay involved; the length of the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; whether there is a good point of law of sufficient importance such as the illegality of the decision sought to be challenged."*

The court of Appeal of Tanzania in **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015, the Court of Appeal laid down guidelines for the grant of extension of time repeating its decision in the case

of ***Lyamuya Construction Company Limite v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 thus:

- a) The applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) If the court feels that there other sufficient reasons, such as the existence of a point of law sufficient importance; such as the illegality of the decision sought to be challenged"*

It is therefore upon the party seeking extension of time to provide the relevant material relating to his particular case in order to move the court to exercise its discretion.

It is evident that, the judgment of the District Land and Housing tribunal was delivered on 11/12/2019. There are two conflicting statements by the applicant regarding time he got the copy of judgment. The first is found in the applicant's submissions that the tribunal failed to supply a copy of ruling in time. He submitted that it was supplied to him after complaining to the District commissioner. The second statement is found in the applicant's affidavit that after the pronouncement of the judgment on 11/12/2019 he requested for certified copies of judgment and proceedings. He was only supplied with a copy of judgment but not the proceedings. He made follow-ups of the same unsuccessfully until when he could not move

from his village due to the outbreak of Covid-19. On my part, I shall deal with averments in the affidavit. This wisdom takes into consideration the fact that affidavits are evidence, unlike submissions from the bar which serve as narrations that complement the evidence deposed on oath ( ***The Registered Trustees of the Archdiocese of Dar es Salaam v. The chairman Bunju Village and 11 Others***, Civil Appeal No. 147 of 2006). Adequacy of the reasons for the applicant's failure to take steps, at a particular time, is gauged through these depositions.

When all said to the guiding principles, I shall right away reject the explanation that the applicant failed to file his appeal within 60 days because he got a copy of judgment late but also was prevented by the outbreak of Covid-19. From the records the impugned decision was delivered on 11/12/2019. The applicant had 45 days to appeal to the High Court as per section 41 (2) of the Land Disputes Courts Act. The mention of a date he got the copy of the judgment was very crucial in assisting to calculate the number of days he delayed so that they be excluded. The chamber summons indicates that the applicant filed the application on 23/7/2020. Almost 7 months and 12 days had elapsed from the time of delivery of judgment. The applicant has failed to inform this court on the exact date he collected the copy of judgment. In the circumstances and bearing in mind his affidavit evidence, inference is drawn that he collected the copy of judgment within 45 days but due to laxity and negligence he did file the appeal.

In respect to the outbreak of Covid -19, with all due respect I disagree with the applicant and agree the respondent's observation. As averred by the respondent in her counter affidavit, the period the appellant was required

to lodge his appeal on 11/2/2020 our country was still free from Covid-19. However, there was no lockdown and the courts in Tanzania did not cease operation since then to dat. The applicant would be safe if he proved that he was sick and the symptoms showed it was Covid – 19.


All facts and circumstances considered, nothing falls anywhere close to the principles propounded in any of the cited cases. The Court cannot be exposed to the danger of being led by sympathy where the applicant was presented with a glorious chance of convincing the Court, only to be spurned for reasons best known to the applicant himself.

Consequently, and on the basis of the foregoing, I hold that the applicant has spectacularly failed to convince me that delays in lodging the bill of costs were caused by any sounding reasons that fall in the realm of sufficient cause. In view thereof, I find that the applicant has failed the test set for grant of extension of time. Accordingly, I dismiss the application with costs.

It is so ordered.

Dated at Dar es Salaam this 30<sup>th</sup> day of June, 2021



  
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**J. M. KARAYEMAHA**  
**JUDGE**