

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

MISC. LAND CASE APPLICATION NO. 713 OF 2023

CASTO FRANCIS CHILAMBO.....APPLICANT

VERSUS

FADHILA MOHAMED.....RESPONDENT

RULING

06/3/2024 & 19/04/2024

GWAE, J

The applicant, Casto Francis Chilambo was the applicant before the District Land and Housing Tribunal for Ubungo District at Luguruni ("the trial tribunal") vide Application No. 190 of 2022. He was the losing party in the judgment and decree of the trial tribunal delivered on the 14th day of August 2023.

Feeling aggrieved by the decision of the Trial Tribunal, the applicant was ambitious to prefer an appeal before the Court. According to him, he was barred by the Law of Limitation of time. Thus, this application for extension of time to enable him file the intended appeal. The application is brought under section 14 (2) of the Law of Limitation Act, Cap 89, Revised Edition, 2019 (Herein LLA).

Ground for the applicant's delay as depicted in his sworn affidavit is; late supply of copies of the judgment and its decree as he wrote a letter on 18th August 2023 requesting for the copies till on 26th September 2023 when he was availed with the same.

Upon service of the summons and together with the copy of the application, the respondent resisted it by filing his counter affidavit with effect that, the travelling documents do not bear the applicant's name but the name of another person known as Castor Alfredy Chilambo. However, he admitted that, the copies of judgment ad decree were collectable effectively from 26th day of September 2023. Apart from the resistance of the merit of the applicant's application through his counter affidavit, the respondent also issued a notice of preliminary objection questioning its competency. The respondent's preliminary objection is comprised of the following points of law;-

1. That, the application is bad in law as the applicant herein was not party to the case at the trial and not a party to the judgment and decree sought to be appealed against
2. That, the affidavit in support of the application is incurably defective since the deponent in the jurat of attestation is not the same as the applicant who sworn the affidavit

On 20th February 2024 when this application was placed before me for hearing, Mr. Fred Julius and Mr. Charles Masanga, both the learned advocates appeared duly representing the applicant and respondent respectively. However, the hearing of both the respondent's PO and main application was conducted by way of written submission.

Supporting the 1st limb of the objection, the respondent's counsel was of the submission that, this application is incompetent for being filed by a person who was not a party to the judgment and decree intended to be appealed. His basis for his opinion is the copy of the travelling passport attached in the application where he is referred to as "Castor Alfredy Chilambo" as opposed to the name of "Castor Francis Cilambo" in the judgment to be appealed as well as the name "Casto Francis Chilambo" as appearing in this application.

Equally, the respondent's counsel submitted that, the jurat of attestation is fatally defective since the name in the affidavit is introduced to be "Casto Francis Chilambo" whereas in the jurat of attestation the same person appears as "Costa Francis Cilambo".

In his response to the respondent's argument pertaining to the 1st limb of objection, the applicant's counsel argued that, the omission to insert "r" in the name Castor as appearing in the judgment and decree

intended to be appealed. According to the applicant's counsel, the raised points of objections by the respondent are not pure points of law as required by the law. He urged this court to refer to **Mukisa Biscuit Manufacturing Limited vs. West End Distributors Limited** (1969) EA 696.

Having outlined the parties' arguments of the parties' advocates, it is now for the court's determination on the respondent's PO. The issues before me are;- **One**, whether an omission to insert the letter "r" in the name "Castor" or whether name, "Costa Francis Chilambo" in the attestation clause, instead of Castor Francis Chilambo as it appears in the judgment and decree of LDHT render the application fatally defective and.

Two, whether the difference in names appearing in the application and that appearing in the driving licence

In the first limb of the defendant's objection, I have considered the parties' rival submissions for and against the points of objection; I am of the view that, the mistakes correctly raised by the respondent's advocate of the name of the applicant are genuine. However, the same are found to be common mistakes as the same are nothing but misprint or typing errors amendable in the eye of the law. The complained errors are curable under section 3A of the Civil Procedure Code, Cap 33, Revised Edition,

2019 in the wake of the overriding objective. Thus, the complained errors do not go to the root of the matter.

Similarly, the issue on whether, the applicant's name, "Casto Francis Chilambo" appearing in this application title and the "name, Casto Alfredy Chilambo" appearing in the attached passport refer to the same person (applicant) or not, in my opinion, that fact requires proof. I subscribe to the famous precedent in the case of **Mukisa Biscuits Manufacturing Company LTD vs. West End Distributors LTD** (1969) EA 696 where preliminary objection was defined as follows;

"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings, and which, if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving to the suit to refer the dispute to arbitration."

In our instant matter, the difference of the names in the application and the annexure accompanying the applicant's affidavit earnestly requires ascertainment of some facts. Hence, the same does not qualify to be a pure point of law. I also find that, if the name depicted in the attached travelling document is different from the one in the application

is a matter of placing weight to the same or otherwise, as I shall demonstrate hereinafter. Basing on the deliberations herein above, the defendant's PO in both points is thus overruled.

Now to the determination of the applicant's main application, it is the applicant's version that, his delay to timely file his intended appeal was due late supply of the certified copies of judgment and decree. It is as argued and admitted by the counsel for the applicant and respondent respectively that, the certified copies were made available for collection from 26th September 2023.

Since it is plainly clear that this application was physically filed 24th October 2023 whereas the judgment and decree intended to be appealed was delivered on 14th August 2023. Hence, two days prior to lapse of 45 days within which to file an appeal pursuant to section 41 (2) the Land Disputes' Courts Act, Revised Edition, 2019 and 12 days of actual delay from the date of the judgment and when this application was physically filed. Nevertheless, record as to electronic filing is silent, so the applicant's application possibly was deemed filed even before 14th October 2023 after its admission by the DR.

As rightly submitted by the applicant's advocate that, the period from when the applicant applied for obtaining certified copies of judgment

and decree are excludable as per to section 19 (2) of the Law of Limitation Act, Cap 89, Revised Edition, 2019. This legal position was emphasized by the Court of Appeal of Tanzania in the case of **Alex Senkoro and 3 others vs Eliambuya Lyimo** (Civil Appeal 16 of 2017) [2021] TZCA 104 (13 April 2021) by stating that;

*"We entertain no doubt that the above sub sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an of the court in a normal application for extension of time. Indeed, that stance was taken recently in **Mohamed Salimini v. Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2018 (unreported), where the Court affirmed that section 19 (2) of the LLA **obliges the courts to exclude the period of time requisite for obtaining a copy of the decree appealed from.**"[Emphasis added]*

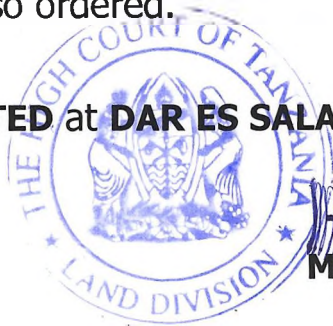
Being directed by the binding decision herein above, I am therefore compelled to hold that even this application for extension of time is worthless provided that, the exclusion is indicated in the Memorandum or Petition of Appeal. If the time from when (18th August 2023) the applicant applied for being availed with the requisite certified decree and judgment and when he was actually supplied on 26th September 2023, this court

was obliged to exclude the requisite time for obtaining the decree and judgment appealed by the appellant now applicant. I have also considered the fact that, a decree is a requisite for appealing to this Court in terms of Order XXXIX Rule 1 (1) of the Civil Procedure Code, Cap 33, Revised Edition, 2019

Consequently, the application is granted, the applicant is given fourteen (14) days within which to file his intended appeal to the Court. Given the circumstances of this application. For the interest of justice, the name of the applicant should from now onwards be read as "Castor Francis Chilambo". I refrain from making any order as to costs of this application as well as to the respondent's PO.

It is so ordered.

DATED at DAR ES SALAAM this 19th April 2024



M. R. GWAE
JUDGE