

TANZANIA / JUDGMENT

Kashamagome

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13 December 2023

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA TABORA SUB REGISTRY ATTABORA
MISC. LAND APPLICATION NO. 37 OF 2023 (Arising from the decision of the District Land and
Housing Tribunal for Tabora in Land Appeal No. 33 of 2021 Original Land Case No. 2 of 2021 before
Ufukutwa Ward Tribunal) MOSHI SALE HE KASHAMAGOME..... APPLICANT
VERSUS IDD RAMADHANIRESPONDENT

RULING

Last order: 28/02/2024 Ruling date: 14/03/2024 MANGO, J By way of Chamber summons made
under section 38(1) of the Land Disputes Courts Act, the Applicant filed the application at hand
praying for the following orders: -

1. That the Court be pleased to extend time to file an appeal against the decision of the District Land and Housing Tribunal for Tabora in Land Appeal No. 33 of 2021.
2. Costs of the application and,
3. Any other orders and reliefs that the Court may deem fit to grant. 1 The application is supported by an affidavit sworn by the Applicant, Moshi Salehe Kashamagome. The Respondent, Idd Ramadhani, objects the grant of orders sought in the chamber summons and he filed his counter affidavit to that effect. On 13th December 2023 the Court granted a prayer by both parties to have the application argued by way of written submissions. I am grateful to the parties for their compliance with the schedule of submissions. The Applicant's submission was drawn and filed by his advocate, Hassan Kilingo while the Respondent's submission was drawn and filed by the Respondent himself. In his submission in support of the application, advocate Kilingo adopted the contents of the Applicant's affidavit to form part of his submission. He also acknowledged the fact that, granting of extension of time is a discretion of the Court which need to be exercised judiciously. He also pointed out the legal requirement that entrusts the duty to the Applicant to account for each day of delay with a sufficient cause. The Applicant's counsel submitted on the reasons advanced by the Applicant to move the Court to grant extension of time to file the intended appeal. He referred the Court to the contents of paragraphs of the Applicant's affidavit which contain reasons that contributed to his delay to file the intended appeal, that is, paragraphs 4, 5 and 6 of the affidavit. According to his submission and the contents of mentioned

paragraphs of the affidavit, the reasons advanced by the Applicant in accounting for his delay are, delay in obtaining necessary documents from the District Land and Housing Tribunal and illegality. 2 The learned advocate argued that, the Applicant was supplied with the copy of judgement and decree of the appellate tribunal after the expiry of time limit for appeal to this Court. He explained that, the judgement subject to this application, was delivered on 3rd August 2021. The Applicant was supplied with a copy of the said judgement on 2nd June 2023 when time limit for appear had already lapsed. He then had no choice other than filing an application for extension of time which was filed on 4th July 2023. Advocate Kilingo also pointed out briefly on the issue of illegality. In this he referred the Court to para 6 of the Applicant's affidavit under which the Applicant alleges that, the Appellate Tribunal determined the appeal on issues it raised suo motto without affording parties with the right to address the tribunal on the raised issues. He concluded his submission with an opinion that, the Applicant has managed to account for his delay with a sufficient cause. He fortified his opinion by the decision of the Court in the case of Zulfa Salum Abdallah and 3 others versus Najma Ahmed Miscellaneous Land Application No. 525 of 2016, High Court of Tanzania, Land Division and the case of Registered Trustees of the Archdiocese of Dar es salaam versus The Chairman Bunju Village Government and 11 others, Civil Appeal No. 147 of 2006 Court of Appeal of Tanzania at Dar es salaam, In his reply submission, the Respondent challenged the alleged delay in obtaining the copy of judgement for failure to be ascertained by evidence. He submitted that, the Applicant did not establish efforts made by him in reminding the tribunal to supply him with a copy of judgement. He argued further that, in absence of such efforts, what remains is the Applicants 3 negligence which cannot move the Court to grant extension of time. To cement his arguments, he cited the decision of the Court of Appeal of Tanzania in the case of Cosmas Faustine versus Republic Criminal Appeal No. 67 of 2019. The Respondent submitted further that, despite the unsubstantiated delay to be supplied with a copy of judgement for almost one year and 10 months, the Applicant failed to account for his delay for 32 days after he received a copy of judgement. In this he argued that, the Applicant alleged to have received the copy of judgement from the Appellate tribunal on 2nd June 2023 but it took him almost 32 days before he filed the application at hand. The application at hand was filed on 04th July 2023. Unfortunately, the Applicant did not account for his delay for the period between the date he was supplied with copy of judgement and the date on which he filed the application at hand. He referred the Court to the decision of the Court of Appeal in the case of Lyamuya Construction Company Limited versus Board of registered trustee of young women's Christian association of Tanzania, Civil Application No. 2 of 2010 in which the court insisted on accounting for the entire period of delay with a sufficient cause. The Respondents also challenged the alleged illegality. According to him the decision of the appellate tribunal is not tainted with illegalities. The District Land and Housing Tribunal based its decision on the principle of adverse possession and all parties were heard. He prayed for the dismissal of the application. The Applicant had no rejoinder. 4 I have considered submission made by both parties. I am glad that parties to this application understand that for an application for extension of time to be granted, the Applicant need to

account for his delay with a sufficient cause. In the application at hand, the applicant advanced one reason for his delay to file the intended appeal which is delay to be supplied with a copy of judgement of the District Land and Housing Tribunal. He also alleged existence of illegality in the Trial Courts judgement. My duty is to consider whether with those two reasons the applicant has managed to account for his delay so as to move the Court to grant extension of time for appeal. I will start with the alleged illegality. It is trite law that, for illegality to be a reason for extension of time, it should be clear on face of records. The illegality alleged to exist in this matter is not clear on face of record. As submitted by the Applicant's counsel, the alleged illegality concerns grounds considered by the Tribunal in determining the appeal before it. For such illegality to be noticed, the Court will need to consider contents of the judgement and the grounds raised by the Appellant in that appeal. In such circumstances, the illegality cannot be considered to be clear on face of record. Thus, this Court cannot be moved to extend time on the ground of illegality which is not clear on face of record. On the alleged failure to obtain copies of judgement from the District Land and Housing Tribunal, the same is not borne by pleadings in this application. The copy of judgement attached to the applicant's application indicates that the judgement was certified on 15th December 2021 which means it was ready for collection by the parties since that date. It is not clear what prevented the Applicant from collecting the copy of judgement for one year 5 and ten months. The letter which the Applicant wrote to the tribunal dates 16th August 2021. There is no any other letter that Applicant wrote to the tribunal seeking to be supplied with the copy of judgement. I hold so while aware that the Applicant paid for the copy of judgement on 2th June 2023, because, it is not clear what prevented the Applicant from paying and collecting the judgement in December 2021 when it was certified by the chairperson of the Tribunal. Moreover, the Applicant was not legally bound to wait for copies of judgement before he could lodge his appeal. The law, section 38 (2) of the Land Disputes Courts Act provides that appeals from the decisions of the District Land and Housing Tribunal in exercise of its appellate jurisdiction, should be filed before the District land and Housing Tribunal by filing a petition of appeal. The section reads:- "38(2) Every appeal to the High Court 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." The cited provision does not require the Appellant from such decisions to attach a copy of judgement. It rather vests the duty in the District Land and Housing Tribunal to dispatch record of the proceedings and the petition of appeal to the High Court. Such duty of the District Land and Housing Tribunal is reflected under section 38(3) which reads: - "Upon receipt of a petition under this section, the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court." 6 Thus, the Applicant cannot benefit from the exclusion of time spent waiting for a copy of judgement and other necessary documents for appeal under section 19(2) of the Law of Limitations Act. I understand that it is necessary to supply parties with copies of judgement and proceedings of the Court to enable them formulate meaningful appeals. However, each case need to be determined on its own circumstances. In the application at hand, I agree with the

Respondent that the Applicant did not act diligently. I hold so because, it took the Applicant more than a year to pay for a copy of judgement as reflected in the receipt and copy of judgement attached to the Applicant's affidavit. Despite such unaccounted delay, the Applicant took more than 30days to file the application at hand after collecting the copy of the judgment from the District Land and Housing Tribunal. The conduct of the Applicant establishes that he did not act diligently. In such circumstances the court cannot exercise its discretion to extend time for the Applicant. The Application is hereby dismissed with costs. Dated at Tabora this 14th day of March 2024 Z.D. MANGO JUDGE

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