

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPLICATION NO. 70 OF 2020

IDD SULTAN MULUNGA.....APPLICANT

VERSUS

CHARLES B. NYATO.....1ST RESPONDENT

SABINA ALEXANDER SANGA.....2ND RESPONDENT

Last order: 13/10/2020

Ruling: 19/01/2021

R U L I N G

MANGO, J.

Before me is an application for extension of time to appeal against the decision of the District Land and Housing Tribunal for Ilala in Application No. 178 of 2012 which was delivered on 6th May 2017

The application is by way of a Chamber Summons made under section 41(2) of the Land Disputes Courts Act, [Cap 216 R.E 2002], supported by an affidavit sworn by IDD SULTAN MULUNGA, the Applicant. The application is opposed by the respondents who filed a counter affidavit sworn by their advocate, one Lucky Titus Kaguho. The applicant was represented by advocate Joseph Samwel, Advocate.

On 27th October 2020, the court ordered the application to be argued by way of written submissions the order which was duly complied with by the parties.

In his submission in chief, Mr. Joseph Samwel adopted the contents of the affidavit filed in support of the application. According to the affidavit and the submission by the learned counsel for the applicant, the reasons for delay were failure to obtain copies of judgement and decree intended to be appealed from and the closure of advocate's office after obtaining the copies of the said documents. The learned counsel argued that, although it is alleged that copies of judgement and decree of the tribunal were ready for collection since November 2017, the same were not availed to the applicant despite several written requests for the same. According to him and paragraph 7 of the affidavit, the applicant obtained the said documents on 1st November 2019.

In his reply submission, Mr. Kaguho argued that, the allegations by the applicant that he received the copies of the decree and Judgement late are not true as the copy of judgement attached to this application shows it was ready for collection by 24th November 2017. He also argued that the applicant failed to account for 110 days delay in taking any action after receiving the copies of judgement and decree. He prayed for dismissal of the application with costs

In his rejoinder, counsel for the applicant reiterated his submission in chief.

I have considered the submissions made by both parties and Court record. The copy of Judgement attached to this application shows that the

documents were ready for collection on 24th November 2017, the date which the copy of judgement was certified and decree signed by the Chairman of the trial tribunal. It is well established that the date of certification is the date when the document is ready for collection by the parties. In this, I agree with the counsel for the respondent that, the documents were ready for collection on 24th November 2017 and it was the duty of the applicant who wished to appeal against the said decision to collect the documents for appeal purposes.

The applicant has on the other hand established his efforts in obtaining the said documents which did not yield positive results for two years from the date of Judgement. According to him he wrote a number of letters requesting for copies of the documents which the court record shows were ready for collection but the same were not availed to him. He attached the letters he wrote requesting for the copies of decree and Judgment, the letters bear stamp of the trial tribunal which indicates that they were received by the tribunal. The fact that the applicant wrote those letters requesting for copies of the said documents was not countered by any reliable evidence. The respondents merely put the applicant to strict proof on the contents of the affidavit that the applicant deponed on the unfruitful follow ups he made for the copies of the said documents. The letters attached to the affidavit shows that the applicant was still making followups on the documents up to late 2018. In such circumstances, I find it in the interest of justice to give the applicant the benefit of doubt as to when exactly the documents were availed to him by picking the date mentioned in the applicant affidavit instead of the date that appears in the

documents. I am aware that the date of certification of the judgement is considered to be the date from which the documents were ready for collection by the parties but circumstances of this case are very peculiar and they deserve to be given exceptional consideration.

I have also considered the delay of 110 days after obtaining the copy of the said documents and reasons advanced for such delay. In this, I considered the fact that the advocate who was in vacation, was the same advocate who represented the applicant before the trial tribunal.

For those reason, I find the applicant to have successfully accounted for the delay and I hereby grant the application. The applicant should file his appeal within 30 days from the date of obtaining a drawn order from this ruling.

Given the nature of this application I award no costs, each party should bear his own costs.



Z. D. MANGO

JUDGE

19/01/2021