

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

MISC. LAND APPLICATION NO. 83 OF 2015

B/U Arusha High Court Land Appeal No.57/2013

(Original Babati District Land and Housing Tribunal application No.73/2012)

MARY SILVERIUS QORRO APPLICANT

VERSUS

EDITH DONATH KWEKA 1ST RESPONDENT

WILFRED STEPHEN KWEKA 2ND RESPONDENT

RULING OF THE COURT

MAGHIMBI, J

The applicant herein lodged this omni-bus application under the provisions of Sections 5(1)(c) and 11(1) of the Appellant Jurisdiction Act, Cap. 141 RE 2002, Section 47(1) of the Land Court Disputes Act, Cap 216 seeking for an order for extension of time to apply for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 57/2013. Further prayed for the court to be pleased to grant to appeal to the Court of Appeal against the decision in the said Land Appeal No. 57/2013. The application was supported by an affidavit of the applicant dated 29th day of May, 2015.

The background of the matter as per the deposed affidavit is that the applicant herein was the appellant in the said Land Appeal No. 57/2013 decision of which was delivered on 12/09/2014 in favour of the current

respondent. The appellant deponed that on the date the judgment and thereafter she was not in good health condition and on 18/10/2014 she was admitted at the hospital. A notice of appeal was however filed on time by her friend Helen Qamunga. That the said Hellen obtained the copies of judgment on 10/02/2015 and a decree on 18/03/2015. She deponed further that on 27/03/2015 she filed a Miscellaneous Land Application No. 45/2015 and on the 19/05/2015 she withdrew the application with a leave to refile. Hence the delay was caused by the sickness which was beyond her control.

On the reasons for application for leave, the applicant deponed that the dispute is respect of ownership of a property registered in her name with Certificate of Title No. 28425. It was however declared by the Babati District and Housing Tribunal that the property belongs to the estate of the deceased one Donati Kweka which is currently under the administration of the respondents and there are issues to be determined thereof as the appointment of the administrator of the estate of the deceased Donati Kweka and the fact that the applicant was in possession of the disputed property for fourteen years.

Having gone through the records of application and the parties' submissions thereto, I will be guided by the case of **Samson Kishosha Gabba Vs. Charles Kingongo Gabba 1990 TLR 133** where the Court held that:

"In determining whether or not to allow an application for leave to appeal out of time the court has to consider the reasons for the

delay as well as the likelihood of success of the intended appeal.”

I will discuss the reason of delay as well as the likely hood of success of the appeal together while further guided by the case of **Bushiri Hassan Vs Latifa Lukiyo Mashayo in Civil Appln No 3 of 2007**(unreported) where the Court of Appeal of Tanzania held that

“delay even of a single day has to be accounted otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.”

In this case the applicant has convinced this court of her reasons for the delay as she has provided proof that she was sick and the extra effort taken to have one Hawa Qamunga to make follow ups on her behalf. As being sick is not something that a party can foresee, I am satisfied at this point of the reasons of the delay hence prayer for extension of time is hereby granted.

As regarding the application for leave to appeal to the Court of appeal, I am further satisfied that the intended memorandum establishes grounds which call for the attention of the court of appeal. For that reason the second prayer is granted.

In conclusion, the applicant herein has given justifiable reasons to warrant grant of prayer for order of extension of time and leave to appeal to the court of appeal. Consequently this application is hereby granted, the applicant is hereby granted extension of time to apply of leave to appeal

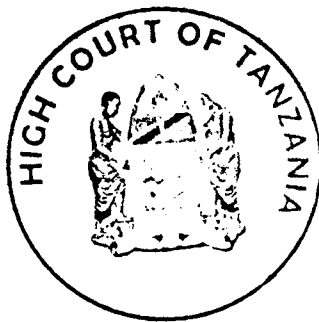
and having been so granted is further granted leave to appeal to the court of appeal against the High Court decision in Land Appeal No. 57/2013. I give no order as to costs.

Application Allowed

Dated at Arusha this 11th day of September, 2015

**SGD
S.M MAGHIMBI
JUDGE**

I hereby certify this to be a true copy of the original.




**Deputy Registrar
High Court
Arusha**

