

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT ARUSHA

MISC. LAND APPL. NO. 96 OF 2017

(C/F High Court Misc. Land Application No. 202 of 2017, Misc. Land Application No. 148 of 2016, Arising from District Land and Housing Tribunal of Manyara Region at Babati Application NO. 3 of 2014)

GWAHERI LEONI.....APPLICANT

VERSUS

ANNA AKUNAAY.....RESPONDENT

RULING

Date of last Order: 27/02/2018

Date of Ruling: 27/03/2018

BEFORE: HON. S. C. MOSHI, J:

This is an application for extension of time. I have considered both parties submissions.

The sole ground for applicant's delay, as stated in the affidavit as well as in the submissions is the fact that he was sick. He averred that he was supplied with copies of Judgment, Proceedings and Decree on time, i.e. on 21/09/2015. However he failed to appeal in time because he fell sick and he was instructed by his Doctor to have a complete bed rest as evidenced by a discharge report; annexure "GL1". On 18th August; 2016, he filed Application No. 148/2016 that was withdrawn with leave to re-file. The order was delivered on 06/09/2016. He refiled the application but

again it was struck out by Honourable Opiyo, J on 04/07/2017 because the affidavit was defective; that was on 11/07/2017.

Briefly, those were the applicants reasons for delay. The issue is whether the applicant has shown good cause for the Court to exercise its discretion to grant him extension of time beyond the time limits that are set by Law.

The applicant is duty bound to account for the delay and the delay should not be inordinate; see the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian – Association of Tanzania**, Civil Application No. 22 of 2010 (unreported) where the Court held that:-

- 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 he intends to take; and
- d. If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged”.

Now reverting back to our case. The applicant stated that he fell sick immediately after receiving the necessary copies for appealing on 21/09/2015. However that supporting hospital reports show that he attended hospital on 15/12/2015. That is 86 days after receiving the copies of Judgment, Proceedings and Decree. The report does not indicate that the applicant was to have a complete bed rest. The report indicates that

the applicant was an outpatient. He was not required to attend hospital again; as he was not given a date for next attendance. It is obvious that the 86 days, i.e. from the date of receiving the necessary copies for appearing to the date that he attended hospital are not accounted for. He also did not explain a delay of 246 days i.e. from the date that he attended hospital to the date that he filed the first application on 18/08/2016.

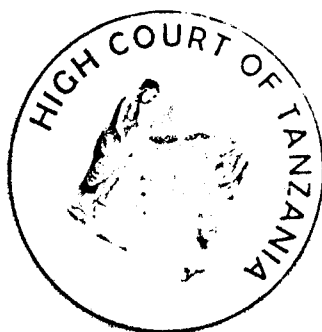
Furthermore there are 54 days which were not accounted for. That's the period when the first Misc. Land Application No. 148 of 2016 was struck out to the time when Misc. Land Application No. 202 of 2016 was filed.

All in all, I find that the applicant has failed to show sufficient cause for delay.

I thus dismiss the application for lack of merits.

The applicant to pay the costs.

Right of Appeal Explained.




S. C. MOSHI

JUDGE

27/03/2018