

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM REGISTRY)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 51 OF 2017

LABAN R. MAMPAGWAAPPLICANT

VERSUS

BABU ABDALLAH SOLANKI.....1ST RESPONDENT

MISKY BABU SOLANKI2ND RESPONDENT

KIBAHA TOWN COUNCIL3RD RESPONDENT

Date of last Order: 21/02/2018

Date of Ruling: 06/04/2018

RULING

ARUFANI, J.

This ruling is for the application for an order of extension of time made to this court under section 41 (2) of the Land Dispute Court Act, Cap. 216 R.E 2002. The applicant is seeking for an order of extension of time to appeal against the judgment and decree of the District Land and Housing Tribunal for Kibaha District issued in Land Application No. 17 of 2011. The application is supported by an affidavit sworn by the applicant. On the other hand the respondents opposed the application by filing in court the counter affidavit sworn by advocate Frank Andrew Chundu for the 1st and 2nd respondents

and another one affirmed by advocate Rajabu Mwinyi for the third respondent. The application was heard by way of written submission.

Submitting in support of the application, the learned counsel for the applicant argued that the decision of the Tribunal was delivered on 29/7/2016, and on 1/8/2016 the applicant applied for copies of the judgment and decree. Unfortunately, on 6th day of August, 2016 the wife of the applicant became sick and hospitalized at Same District in Kilimanjaro Region and the applicant was compelled to take care of his wife while in the hospital where she was hospitalized. The applicant's learned counsel argued that, the applicant was supplied with the documents he sought from the Tribunal on 24/4/2017 when time to file the appeal had already lapsed. He argued further that, the delay to file the appeal in court within the time was caused by the court itself which delayed to supply him the necessary documents for instituting his appeal. He added that, despite the fact that the wife of the applicant was hospitalized and forced to take care of her but he was diligent in making follow up of his case.

The learned counsel for the applicant relied also on allegations of irregularities and illegalities featuring in the judgment and decree of the Tribunal as a ground of seeking extension of time to appeal out of time. He referred the court to the cases of **Kalunga and Company Advocates Vs National Bank of Commerce Limited** (2006) TLR 235, **Principal Secretary, Ministry of Defence and National Service V. Devram Valambia** [1992] TLR 182 at page 189, **Martha Daniel V. Peter Thoms Nko** [1992] TLR 359 and **Benedict Mumello**

in the applicant's affidavit. At the end he prayed for the dismissal of the application.

The 3rd respondent was at one with the submission of the 1st and 2nd respondent. He reiterated that the applicant failed to show when he was supplied with the necessary documents. He said the applicant has failed to account for a period of time from September, 2016 to May, 2017 that is from when the judgment was supplied to him to the date of filing the application in this court. He insisted that, the applicant did not go to collect the sought copies in time until when the 1st and 2nd respondents filed in court an application for execution. He stated that, the copies were ready for collection in time but the applicant failed to collect them on time. Further to that the learned counsel for the third respondent argued that, there is no proof of the illness of the applicant's wife. He contended that, the letter annexed to the affidavit of the applicant is not signed by a person who has authority to sign the same and is not sufficient enough to prove the allegation that the wife of the applicant was sick.

The issue to determine in this application is whether the applicant has adduced sufficient reason for delay to warrant the court to extend the time for the applicant to file in this court an appeal out of time. The sufficient reasons for the delay was defined in the case of **CRDB (1996) Limited V. George Kilindu** Civil Application No. 162 of 2006, CAT at DSM (Unreported) where it was stated inter alia that:-

“What amount to sufficient cause has not been defined but from cases decided by the court it includes among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the applicant.”

Starting with the factor of bringing the application promptly the court has found that, as stated by the applicant the decision of the Tribunal was delivered on 29th day of July, 2016 and he applied to be supplied the copies of the judgment and decree on 1st day of August, 2016. The applicant stated that, while waiting to be supplied with the sought copies on 6th day of August his wife became sick and hospitalized at Same District Hospital and he was compelled to go to take care of her. He to have been supplied with the copies of judgment and decree on 24th day of April, 2017 and filed the present application in this court on 3rd day of May, 2017.

After considering the above sequence of events the court has come to the finding that, although it is true and not disputed that, as stated by the learned counsel for the first and second respondent the copy of the judgment was certified on 22nd day of September, 2016 but the court has found the applicant has given explanation that, by the time when the copy of judgment was certified and became ready for collection he was taking care of his wife who was sick and that is supported by the letter from Same District Medical Officer dated 22nd day of March, 2017.

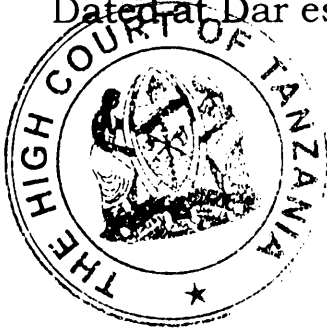
Despite the fact that the learned counsel for the respondents challenged authenticity of the said letter on the ground that it was

signed on behalf of the Medical officer but the court has found that argument alone cannot be taken as a sufficient ground for finding the said letter was not issued by the office of the Same District Medical Officer or is not authentic as there is nothing material stated by the respondents' counsels to establish the person signed the letter had no authority to sign the same. Another argument that the letter is dated 22nd day of March, 2017 which is prior to the filing of the instant application in the court has been found by this court has no merit because the letter stated the wife of the applicant was still under medication and it did not state the patient had recovered so that it can said the applicant was no longer taking care of her.

Under normal circumstances, for a person who has health problem of paralysis cannot be said he or she can recover overnight so that it can be said the delay of the applicant to file the application from when he got the letter on 22nd day of March, 2017 up to 24th day of April, 2017 when he was supplied with the copy of judgment and up to 3rd day of March, 2017 when he filed the instant application in this court has not sufficient explanation and is an inordinate delay. Since it has not been established if the applicant is granted extension of time to appeal out of time the respondents will be prejudiced in anyway the court has found as stated in the case of **Mobrama Gold Corporation Ltd V. Ministerfor Energy and Minerals and others** [1998] TLR 425 it will be inappropriate to deny him extension of time as such denial will stifle his case.

It is from the above stated reasons the court has found the applicant has managed to satisfy the court he was delayed by sufficient reason and he was not negligent in following up his matter as he was delayed by the above stated reasons of delaying to get the copies of judgment and decree of the tribunal and that he was taking care of his wife who was sick. In the premises the court has found this is fit case where the court can exercise its revisionary powers to grant the applicant extension of time to file in this court his appeal out of time. The appeal to be filed in the court within thirty days from the date of this ruling. The court is ordering each party to bear his own costs in this matter. It is so ordered.

Dated at Dar es Salaam this 6th day of April, 2018



I. Arufani
I. ARUFANI
JUDGE
06/04/2018