

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 34 OF 2018

ALEXANDA EDWARD APPLICANT

VERSUS

ULIMBAKISYA KABIGI RESPONDENT

RULING

W.R. MASHAURI – J.

20/04/2020 & 18/05/2020

This is an application for extension of time to file an appeal in this court out of time against the decision of the District Land and Housing Tribunal of Rukwa at Sumbawanga in Appeal No. 37 of 2016 which had originated from the decision of Sumbawanga Ward Tribunal in land case No. 22 of 2017.

The application has been brought by the applicant under S. 38(1) of the Land Disputes courts Act, Cap. 216 RE 2002, Section 95 and order XLIII Rule 2 of the Civil Procedure Code (CPC) Cap. 33 RE 2002.

However S. 95 and order XLIII Rule 2 of the CPC Cap. 33 RE 2002, in this matter which is involving land is superfluous.

The relevant law pertaining this case, being a land case is the Land Disputes Courts Act Cap 261 RE 2002.

Section 38(1) of the Land Disputes Courts, Act Cap 216 under which this application has been brought in court provides as follows:-

38 Appeals of matters originating from the Ward Tribunal.

(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal, may within sixty days after the date of the decision or order, appeal to the High court (Land Division).

Provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal of sixty days has expired.

In this application, both the applicant and the respondent have filed there respective contentious documents in this court on which each is expecting to win his case basing on the provisions of S. 38 (1) of the Land Disputes courts Cap. 216 (supra).

In support of his allegation that the delay to file his appeal in the High Court was not that of his own making, the applicant Mr. Alexander Edward contended in this court as well as he does in his sworn affidavit that, the delay to file his appeal in this court was not that of his own making.

That, he late to lodge his appeal in the High court because of sickness. On 29/7/2018 he suddenly got sick. He was taken to Matai Health Center for treatment whereby upon being examined was found victim of a mens'

deceased known as hernia. Matai Health Center could not be able to attend him. He was referred to Sumbawanga Regional Hospital.

That, upon given a referral letter to Sumbawanga Region Hospital was not taken there straight forward. He was taken home where he stayed one week using medicines he was given at Matai Health Center for reducing pains. He did not inform his employer in respect of his referral to Sumbawanga Region Hospital. His employer also refused him to go to Hospital because there was no other watchman to replace him at his working place. Of late he got one youth called Emily Mikoma after a week and he replaced him.

Having replaced by Emily Mikoma, he decided to go to Sumbawanga Region Hospital but along the way he decided not to go to hospital and instead, he went to the District Land and Housing Tribunal for Rukwa to collect a copy of judgment because he feared to delay filing his appeal in the High Court.

That, he did not go to Hospital for fear of being operated which could cause him more delayed to file his appeal.

At the District Land and Housing Tribunal was told to collect the judgment and proceedings of the court after three weeks.

When he returned to the Tribunal after the lapse of three weeks was again told to go there after a lapse of two weeks. He was wicked and decided to seek an assistance from the District Commissioner. At the office of the District Commissioner was given a letter by the District

Administrative secretary to take it to the District Land and Housing Tribunal whereby he was again told to collect his copy of judgment and proceedings after two weeks.

He got the copy of judgment and proceedings of the Tribunal 12 days before the time of appeal of 60 days have expired.

In reply to the applicant's submission, the respondent contended that, the submission by the applicant in support of his application is bankrupt of merits. He did not produce in court any document in support of his allegation that he was sick.

Fatherstill, the applicant alleged he got the copy of judgment and proceedings of the Tribunal 12 days before the period of appeal of 60 have yet expired but he did not give reasons why he did not lodge his appeal in the High Court within the said 12 days. Having so submitted the respondent prayed the court to dismiss the applicant's application for want of good and sufficient cause to extend the time.

In rejoinder, the applicant said was serious with his case contrary to what the respondent said that, he was not serious.

He was serious because on 06/8/2018 after delivery of the judgment he went to the High Court to lodge his intention to appeal to the High Court and the notice was wrote and he lodged it in the District Land and Housing Tribunal. It was not admitted. He went to the District Land and Housing Tribunal to look for a copy of judgment. That he was not given treatment documents because he was not admitted.

The issue for consideration and determination in this application is whether the causes for delay given by the applicant are good and sufficient causes which can move this court to extend the time for filing an appeal out of time as prescribed by the law.

The reasons for delay given by the applicant in this application are in fact a farrago of confusing and confounding contradictions.

What he stated to be causes for delay during the hearing this application is as follows:-

On 29/07/2018 was suddenly attacked by a mens' decease commonly known as hernia. He was taken to Matai Health Center for treatment but was not treated. He was referred to Sumbawanga Regional Hospital.

That having been given a referral letter to Sumbawanga Regional Hospital was not taken there straight forward. Instead he was taken home where he stayed one week using medicines he was given at Matai Health Centre for reducing pains.

That, he did not inform his employer in respect of his referral to Sumbawanga Regional Hospital. His employer also refused him to go to Hospital because there was no other watchman to replace him. Of late he got one youth called Emily after a week and replaced him.

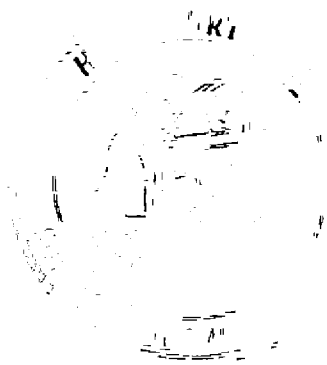
Having been replaced by the said youth Emily, he decided to go to Sumbawanga Regional Hospital but along the way he decided not to go to Hospital and instead he went to the District Land and Housing Tribunal for

Rukwa to collect a copy of judgment. He did not go to Hospital for fear of being operated.

That when he went to the District Land and Housing Tribunal was told to collect his copy of judgment after three weeks and when he went there again was told to collect it after two weeks. He was wicked and he decided to lodge his complaint to the District Commissioner's secretary office where he was given a letter to take it to the District Land and Housing Tribunal whereby he was again told to collect his copy of judgment after two weeks. He got the copy of judgment and the proceedings of the Tribunal 12 days before expiry of the 60 days of appeal.

As alleged by the applicant those are the good and sufficient reasons caused his delay to lodge his intended appeal in the High Court in time. The applicant also told the court in his submission in support of the application that, he was given the judgment and proceedings of the Tribunal 12 days before the expiry of the sixty days described by the law and he did not say why he could not lodge his appeal in the High court within the 12 days time upon receipt of the judgment and proceedings before expiry of the 12 days.

On my side, I am inclined to the respondent in his reply that, the submission by the applicant in support of his application is bankrupt of merits. To grant such an application would be a mockery of justice and would bring the process of the law into contempt and ridicule. I do hereby therefore dismiss the applicant's application with no order as to costs.




W.R. MASHAURI

JUDGE

18/05/2020

Ruling delivered in absence of all parties this 18/5/2020.




W.R. MASHAURI

JUDGE

18/05/2020