

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MICL LAND APPLICATION NO. 4 OF 2020

*(Arising from the judgement of the District Land and Housing Tribunal for
Mara at Musoma (Hon. Kitungulu, E., Chairman) dated 16/09/2019
in Land Appeal No. 81 of 2019)*

GODFREY JAPAN MAFURU APPLICANT

VERSUS

JAPAN MAFURU NYAKABENGWE RESPONDENT

RULING

Date of Last Order: 7th May, 2020

Date of Ruling: 15th May, 2020

KISANYA, J.:

Godfrey Japan Mafuru has moved this Court to be pleased to grant him leave for extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 81 of 2019. This application is made under section 38 (1) of the Land Disputes Courts Act, 2002, section 14(1) of the Law of Limitation Act, Cap. 89, R.E. 2002 and any other enabling provision of the law.

Briefly, the applicant unsuccessfully sued the respondent, Japan Mafuru Nyakabegwe (his father), in the Mwigobero Ward Tribunal, claiming for unlawful occupation of a room at House No. 24, Kawawa within Musoma Municipality (suit room). His appeal against the said decision was dismissed by the District Land and Housing Tribunal on **16/09/2019**. As the time to appeal lapsed, the applicant has filed the present application which was received at this

Court on **19/02/2020**. The reasons for the delay have advanced in the affidavit in support of the application.

When the matter came up for hearing before me, the applicant appeared in person. The respondent failed to appear. The affidavit of service affirmed by Juma Hassan Ebambo on 26/3/2020, proved that the respondent was duly served. Therefore, the hearing of this application proceeded in his absence.

The applicant was then called upon to submit in support of the application. He reiterated the reasons advanced in the affidavit that, the copy of judgement was supplied to him on 2/10/2019 and that, he failed to appeal in time because he was sick. The appellant submitted that, he started by having medication. As the condition became worse, he went to Mara Region Referral Hospital where he was admitted on 26.10.2019 and discharged on 30.10.2019. Therefore, he contended that, he failed to appeal in time because he was sick. Upon being probed by the Court, he conceded that he had not accounted for the delay from 30.10.2019 when he was discharged to 19/02/2020, when the application was filed in this Court. He also failed to account for those in his oral submission. However, he asked the Court to grant the application.

After due consideration to the applicant's affidavit and submission, I have no doubt that, this application is premised on section 38 (1) and (2) of the Land Courts Disputes Act, Cap. 216, R.E. 2002 which sets **sixty (60) days** as the time within which an appeal against the decision of the District Land and Housing Tribunal at appellate jurisdiction should be filed to this Court. However, the Court has discretion of extending the time to appeal if there is good and sufficient cause. The said section provides:

38.-(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:

Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired [Emphasize Supplied].

It is settled law that, the time used to obtain copy of judgement or order required to be appended to the petition of appeal is excluded in calculating the time limitation. This is pursuant to section 19(1) of the Law of Limitation Act, Cap. 98, R.E. 2002. The record at hand shows that, the applicant was availed with copy of judgement on 2/10/2019. Therefore, the period of sixty days started to run against him 2/10/2019 and he required to file his appeal on or before 2/12/2019. However, he failed to appeal within that time and he has filed the present application which was received at this Court on 19/02/2020.

As stated herein, the Court is empowered to extend the time if there is good and sufficient cause. The law does not define the term “good and sufficient cause”. It is decided basing on the circumstances of each case. However, factors to be considered in deciding whether good and sufficient cause has been established include, the reasons for the delay, the time for the delay and whether the appellant was diligently. The above position was stated by the Court of Appeal in **Damas Asses and Another Vs Raymond Mgonda Paula**, Civil Application No. 32/17 of 2018, CAT at Dar es Salaam (unreported) when it held that:

“It is also important to note that, factors constituting sufficient reasons are not categorically explained or itemized, but the same depends on the circumstances of each case. It is however trite law that, in considering whether or not to grant such extension of time, courts take into account

the following factors, the length of the delay; the applicant must account for all the period of delay and must show diligence and not apathy, negligence or sloppiness in prosecuting action that he intends to take; and 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.”

It is also settled that, in order to ensure that the time limitation provisions are taken seriously as intended by the Parliament, each day of delay should be accounted for by the applicant as held in **Loshilu Karaine and 3 Others vs Abraham Melkizedeck Kaaya**, Civil Application No. 140/02 of 2018, CAT at Arusha (unreported) when the Court of Appeal cited with approval **Bushfire Hassan vs Latima Masaya**, Civil Application No. 3 of 2007 (unreported) where it was held that:

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

Having noted the above position of the law, the next issues to consider are whether there is good and sufficient cause for the Court to extend time; and whether the delay has been accounted for by the applicant. The reason advanced by the applicant is sickness after receiving copy of judgement. It is true that, sickness is a sufficient cause and good cause for the Court to extend time. However, this ground apply to the period up to **30/10/2019** when he was discharged from the hospital. I have shown herein that, the time to file appeal lapsed on **2/12/2019**. Therefore, when the applicant was discharged from the hospital, he had 32 days of filing the appeal. The applicant has not accounted for for failing to appeal within 32 after being discharged from the hospital.

Furthermore, this application was filed on **19/2/2020**. That was almost **80** days from **2/12/2019** when the time to appeal lapsed. The applicant has not

accounted for those days. In my opinion, although the applicant was sick at one point in time, he had time of filing the appeal and he has failed to account for that time. I also find that, he was not prompt or diligent to pursue the intended appeal.

Another reason advanced by the applicant is reflected in paragraph 5 of the affidavit, where he states as follows:

“That, there are some irregularities to be determined by this honourable court in regard to status of the parties to the suit as well as how both honourable tribunal entertained the matter at hand.”

The applicant did not elaborate that ground. It appears that, he wanted to raise the ground of illegality. Although illegality is generally accepted as a ground for extending the time limitation, it should be apparent on face of record record. Thus, the Court must be satisfied that there is illegality on face of record as held in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010, (unreported) cited with approval in **Damas Asses And Another** (*supra*), that:

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts/ it cannot in my view, be said that in VALAMBIA's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises point of law should, as of right, be granted extension of time if he applies for 'one. The Court there emphasized that **such point of law must be that of sufficient importance and, I would add that, it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process**"[Emphasis supplied].

I have gone through the proceedings, issues on the status of the parties was not raised before the District Land and Housing Tribunal. Therefore, it cannot be raised in the intended appeal before this Court. Further, the applicant has not shown the alleged irregularities or illegality in the proceedings and decision of the Ward Tribunal and District Land and Housing Tribunal. Therefore, I find that, the alleged illegality is not apparent on face of record for the court to extend the time.

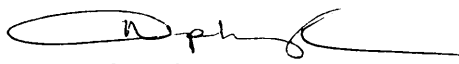
In view thereof, I hold that the applicant has failed to establish good and sufficient cause for the Court to extend the time to appeal. That said, this application is hereby dismissed. I make no order as to costs because the respondent defaulted to appear.

Dated at MUSOMA this 15th day of May, 2020.




E. S. Kisanya
JUDGE
15/5/2020

Court: Ruling delivered this 15th day of May, 2020 in the absence of the parties due to CIVID-19 outbreak. Parties to be notified to collect copy of ruling.


E. S. Kisanya
JUDGE
15/5/2020