

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 12 OF 2019

(Originating from Misc. Land Application No. 115 of 2016 in the High Court of Tanzania at Mwanza, Originated in Land Application No. 32 of 2015 and Land Case No. 12 of 2014)

PASTORY J. BUNONGA APPELLANT

VERSUS

PIUS TOFIRI RESPONDENT

RULING

06/11/2019 & 06/02/2020

RUMANYIKA, J.:

The application, with regard to decision and order of 12/12/2018 of this court for certification of points of law (according to the supporting affidavit whether the High Court (the court) erred in law and fact to hold that there was no sufficient reason for the delay. And, if anything, if the sickness constituted no sufficient reason for extension of time. The application is supported by affidavit of Pastory J. Bunonga. Whose contents himself the applicant adopted during the hearing.

Following a refusal by the court of extension of time, the applicant now comes under Section 5(2) (c) of the Appellate Jurisdiction Act (the Act) and Section 47 (2) of the Land Disputes' Courts Act Chapters 141 and 16 R.E. 2002 respectively.

In a nutshell, but additional to his affidavit, the applicant submitted that the Court of Appeal may determine on the respondent's **locus standi**. That is it.

AsteriaTofiri (upon death of Pius Tofiri, and pursuant to the court's order of 12/06/2019) the legal representative, she submitted like saying that the issue of **locus standi** was unfounded and afterthought. Much as from the beginning it was the very applicant who sued her at Kisesa Primary Court. Also that the applicant had not given account for each day of the delay. That is all.

The issue is whether there are points by this court worth to be certified under Section 5 (2) (c) of the Act.

There in between, the applicant may have fallen sick yes! But with regard to the material medical chit, this court is on record clear:-

.....the letter annexing the prescription card is reproduced partly as under:

"Mtajwa hapojuu alipata matibabu kwa nyakati tofauti tangutarehe 21/12/2015 hadi tarehe 02/02/2016.

Akisumbuliwa na tatizo la kifua (pneumonia)the document annexed do not state that the Applicant was ever admitted in hospital**the decision was delivered on 6th day of November, 2015 and the applicant started attending clinics on 21st day of December,**

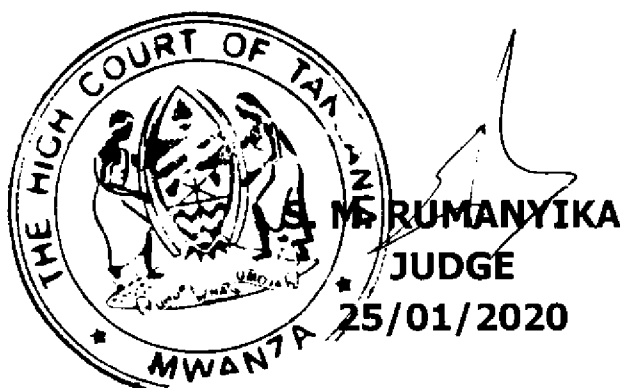
2015.....to 21st day of December, 2015, when the applicant was reported sick. He has not accounted for almost 40 daysthe application is rejected and accordingly dismissed.

From the above quotation and with the long established and accepted principle that extension of time within which one to take a necessary step depends on court's discretion, the applicant has not even suggested that in refusing his application the court acted ultra vires and or arbitrarily. Leave alone the clear fact that contrary to trite law, the applicant did not account for every single day of the 40 days delay during which he was ok.

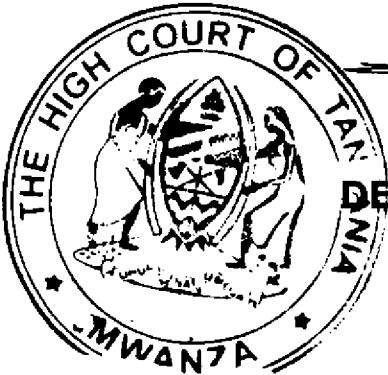
Where it was on the balance of probabilities proved, sickness has been good and sufficient ground for extension of time yes. But with all fairness the fact cannot be founded on mere allegations. There always must be proof by the applicant that he fell sick and for the reason of sickness he was reasonably prevented from taking the necessary step within the prescribed time.

With regard to the issue of the respondent's **locus standi**, I will subscribe to the respondent's argument that the complaint was both unfounded and afterthought. Not only the issue was not deposed in the supporting affidavit, but also the applicant did not deny the fact that from the word go, he was the one who, of course after a diligent search he chose to and sued the respondent at Kisesa Primary Court.

In the upshot, the application lacks merits. It is dismissed with costs.
It is so ordered accordingly.



Delivered under my hand and seal of the court in chambers this 06/02/2020 in the presence of both parties in person.



F. MAHIMBALI
DEPUTY REGISTRAR
06/02/2020