

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. LAND APPLICATION No. 6 OF 2020
*(Arising from the decision of Shinyanga District Land and Housing Tribunal in
Land Application No 25 of 2016)*

LETICIA MASUNGA.....APPLICANT
(Administratrix of the estate of the Late KULWA JIPIGA MALANDO)

VERSUS

MILYASELE LUCHAGULA1ST RESPONDENT

JIDAYI LUCHAGULA.....2ND RESPONDENT

BUNYONGOLI LUCHAGULA.....3RD RESPONDENT

RULING

Date of Last Order: 14th May, 2020

Date of Ruling: 10th July, 2020

MKWIZU, J.:

This is an application for extension of time to appeal against the decision of the District Land and Housing Tribunal for Shinyanga in Land case No 25 of 2016 delivered on 1st March, 2017. The application is made under sections 41 (2) of the Land Disputes Courts Act, Cap 216 as amended by Written Laws (Miscellaneous Amendment) Act No.2 of 2016 ("the LDCA").

When the matter came for hearing on 14/5/2020, the applicant was represented by advocate Geoffrey Tuli while the respondents were in person, unrepresented.

In support of the application, applicant's counsel first adopted the affidavit in support of the application. He, in addition to what was averred to in the affidavit, argued that the delay was due to the applicant's sickness and therefore her application should be allowed.

On their part respondent opposed the application. Their argument was that applicant failed to give reason for the delay. They prayed for the dismissal of the application with costs.

I have examined the affidavit and duly considered the rival submissions. The question which I have to address is whether there has been established in the circumstance, sufficient cause to warrant for the exercise of the Court's discretion to grant the application. It should be stated here that, what amount to sufficient cause for extension of time is a question of fact which depends on the circumstance of each case. See for instance the

case of **Benedict Mumello versus Bank of Tanzania**. Civil Appeal No. 12 of 2002 where it was held that:

" What amounts to sufficient cause has not been defined from decided case, a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanations for the delay lack of diligence on the part of the applicant".

The affidavit as it is raises sickness as the sole ground for lateness. The claim that the applicant was sick is deposed in paragraphs 4 and 5 of the affidavit and authenticated by the medical chits in annexure "A". The claims by the applicant is that, after the decision of the trial tribunal on 1st March, 2017, she on 4th March 2017 applied to be supplied with certified copies of the ruling and drawn order for appeal purposes. She was issued with the requested documents on 16th March 2017 and 22nd June, 2017. She averred further that, before she could lodge the appeal, she felt sick, suffering from lower limb and chest pain .She was then admitted at Williamson Diamond Limited hospital (Mwadui) from 26th March 2017 to 29th March 2017 when she was discharged with a schedule of regular

checkups. As per her 4 paragraphs of the supporting affidavit, her physical condition regained on 20th July, 2017. Six days later, that is, on 26th July, 2017, she filed an application for extension of time to file appeal out of time, Misc. Land Application No. 21 of 2017 which was struck out on 12th November, 2019 for being incompetent. She then on 26 February, 2020 filed the present application.

The respondents did not file any counter affidavit to confute the facts in the affidavit. They were expected to file counter affidavit if they were intending to contest the facts in the affidavit. Thus, the facts deposed in the affidavit remained uncontested. This being the position, I take it that, the period between 26th March 2017 to 20th July, 2017 is justified on account that the applicant was sick. Again, the time between 20th July 2017 to 12th November, 2019 when her first application was pending to when it was struck out is also justified as a technical delay.

The problem is on the time between 12th November, 2019 when application No 21 of 2017 was struck out to 26th February, 2020 when the applicant filed the present application. Neither the applicant's affidavit nor the counsel's submission accounted for these days which are almost 105

days. It is a settled law that, applicant, in an application for extension of time, has a duty to account for each day of the delay. See the case of **Dar es salaam City Council V. S. Group Co. Ltd**, Civil Appeal No. 234 of 2015 CAT (unreported). I find no explanation for the 105 days delay. In the case of **John Cornel Vs A. Grevo (1) Ltd**, Civil Case No. 70 of 1998 where Kalegeya, J (as he then was) stated:

"...however unfortunate it may be for the plaintiff the law of limitation of action knows nor sympathies or equity. It is a merciless sword that cut across and deep in all those who debt caught in its web"

All said and done, the application is unmerited, it is dismissed with costs.

Order accordingly.

DATED at SHINYANGA this 10th day of July, 2020


E.Y. MKWIZU
JUDGE
10/7/2020

