IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS CIVIL APPLICATION No 09 OF 2020

(Arising from Miscellaneous Civil Application No 56 of 2018 in the District Land and Housing Tribunal for Mara at Musoma)

NG'ENG'E MAGIGE .....APPELLANT

Versus

GOROBANI DABRERA..... RESPONDENT

JUDGMENT

27th May & 6th July, 2020

Kahyoza, J.

The appellant, **Ng'enge Magige** sued **Gorobani Dabrera** for a piece of land before the Ward Tribunal. **Ng'enge Magige** lost. Aggrieved by the decision of the ward tribunal, Ng'enge Magige was unable to appeal on time. He applied for leave to appeal out of time to the District Land and Housing Tribunal (the tribunal). The tribunal dismissed the application for extension of time for want of merit.

Dissatisfied by that decision of the tribunal, **Ng'enge Magige** approached this Court with three grounds of complaints. The appellant's grounds of appeal are paraphrased as follows:-

1. The District Land and Housing Tribunal, erred in law and fact for failure to find that local herbalist is not legally authorized to depone on facts regarding his patience, that a herbalist is not

registered, for that reason he does not issue prescription which can be tendered as evidence.

2. That the District Land and Housing Tribunal failed to take into cognizance health condition of the appellant.
3. That the District Land and Housing Tribunal failed to consider the fact the appellant stands to suffer more if time within which to appeal is not extended, than the respondent will suffer if time is extended.

Given the nature of the appeal there is only one issue; whether the appellant adduced before the tribunal sufficient reasons for his delay to appeal against the decision of the ward tribunal.

It is settled that in an application for extension of time, the applicant has to exhibit a good cause or sufficient reason for delay. See **Mumello v. Bank of Tanzania** [2006] E.A. 227 where it was observed that-

> *"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause."*

It is also clear that, what amounts to sufficient cause is relative one. It depends on the circumstances of each case. See **Osward Masatu Mwizarabu V Tanzania Fish Processors LTD** Civil Application No 13 of 2910 (Unreported) where the Court of Appeal stated, thus-

"The term good cause if relative one and is depend upon the circumstance of each individual case. It is upon the party seeking extension of time to provides the relevant material in order to move the court to exercise its discretion"

The appellant's main ground of appeal, which was also his ground for delay is that he fell sick immediately after the ward tribunal delivered its ruling and went for treatment to a local herbalist. For that reason, he delayed to appeal. He submitted that local herbalists do not prescribe treatment or issue medical chit. He was therefore unable to prove that he was attending treatment. He criticized the tribunal for its failure to take into consideration the fact that local herbalists do not issue medical chit.

The respondent told the tribunal that the appellant was not sick. He was at his home place. The tribunal disbelieved the appellant's ground for delay for want of proof that he was attending treatment to local herbalist.

I totally concur with the appellant that local herbalists do not issue medical chit and the appellant was not issued with one. However, like the tribunal, I am not convinced that the appellant delayed to appeal against the decision of the ward tribunal for good cause, that is he was sick. The appellant had a duty to prove by balance of preponderance that he was either bedridden or seriously sick so much that he could not take step to lodge his appeal on time. The Court of Appeal has constantly taken a stance that in an application for extension of time, the applicant has to account for every day of the

delay. The issue is whether the appellant accounted for the days of delay from the date the ward tribunal delivered the ruling until the date he filed the application before the tribunal by simply contending that he was sick. My quick answer is that, merely contending or deponing that the appellant was sick, attending treatment at local herbalist is not enough. The appellant was duty bound to find evidence to convince the tribunal that he was so sick and admitted for all that time or bedridden. He could have found such evidence from his hamlet chairman or any neighbour.

I am alive of the decision of the Court of Appeal in ***Dimension Data Solutions Limited Vs Wia Group Limited and & others*** that:-

> *"It is axiomatic that condonation of (a) delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit.* ***Length of the delay is no matter, acceptability of the explanation is the only criterion****. Sometimes delay of the shortest range may (not) be condonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory".*

In the instant appeal, I am not convinced that sickness prohibited the appellant to take action from **4/12/2017** to **7/2/2018**. That is to say I do not accept the appellant's explanation. I find it a sweeping statement for a person facing a dispute before a court of law to allege

that he fell sick and went for treatment to local herbiest for period of 45 days within which he was required to lodge his appeal. Court's mandate to extend time is a discretion one. That discretion must be exercised judiciously, otherwise the rules of procedures providing timelines will be rendered useless. See **VIP Engineering & Marketing Ltd** & **2 Others vs. Citibank Tanzania Ltd,** Consolidated Civil Reference No.6, 7 & 8 of 2006 (Unreported) where the Court of Appeal stated that *"This discretion, however wide it may be, is a discretion to be exercised judiciously having regard to the particular circumstances of each case. The Privy Council in the case of* ***Ratnam Cumarasamy*** *(1965) 1 WLR 8 at page 12, stated as follows in an appeal from the Supreme Court of Malaya- "The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step-in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation." And in the case of* ***Savill v. Southend Health Authority*** *(1995) 1 WLR 1254,*

Mann L.J. at page 1259, stated as follows" The Rules of the Supreme Court are the rules for the conduct of litigation. They are there for the benefit of plaintiffs and the protection of the defendants. Here the rule was not complied with. We are asked to exercise our discretion to waive the application of the rule. There is no material put before us on which we should grant a waiver. I do not see how one can

exercise a discretion without material upon which to consider it."

The appellant submitted on the second and third ground of complaint that the tribunal failed to consider the fact that at the time he appeared before tribunal he was weak as he had not fully recovered from the attack. He contended in third ground of appeal that the tribunal did not consider that he stood to suffer more, if the application for extension of time is not granted, than the respondent will suffer, if, the application is granted.

It is self-evident that the appellant was not vigilant in pursing his right. The tribunal had no duty to examine the appellant's health condition and determine if he was capable of appealing on time or not. It had no duty to amass evidence but to consider evidence brought before it. **The law serves the vigilant, not those who sleep**. This maxim was derived from the Latin maxim ***"vigilantibus non dormientibus jura subverniut"***. The maxim is in four walls with the decision in **Luswaki Village Counciland Paresui Ole Shuaka Vs Shibesh Abebe,** Civ application No 23/1997 (Unreported) where the Court underscored a need for parties to be diligent and vigilant by stating that-

> "*...those who seeks the aid of the law by instituting proceedings in court of law must file such proceedings within the period prescribed by law...Those who seeks the protection of the law in the court of justice must demonstrate diligence"*

Parties must be vigilant to pursue their rights and not to simply wait for sympathy from the court or tribunal.

Eventually, I am not convinced that the appellant delayed to appeal for a reasonable cause. Consequently, I dismissed the appeal for want of merit with costs.

It is ordered accordingly.

J. R. Kahyoza
JUDGE
6/7/2020

Court: Judgment delivered in the presence of the respondent via video link and in the absence of the appellant dully informed through his wife. Copies of the ruling to be supplied to the parties. B/C Charles present.

THE HIGH COURT OF TANZANIA
MUSOMA

J. R. Kahyoza
JUDGE
6/7/2020