

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA

MISC. LAND APPLICATION NO. 61 OF 2019

*(Originating from the District Land and Housing Tribunal for Kiteto at Kibaya Land
Application No. 2 of 2016)*

JULIUS WILFRED MUNGURE *(Suing as the Administrator
of the Estate of the late Wilfred Ndetaulwa Mungure)* **APPLICANT**

Versus

MWARABU KITISHA **RESPONDENT**

RULING

2nd December & 16th December, 2020

Masara, J

This Application was initially instituted by the late **Wilfred Ndetaulwa Mungure** who died before the application was heard and determined. Mr. **Julius Wilfred Mungure** was appointed the administrator of the estate of his late father on 2/6/2020 and informed the Court that he wished to pursue the application as the administrator of the estate. On 10th June, 2020, this Court allowed him to amend the Application, something that he did, thus the current application. The Applicant has brought this Application under Section 41(2) of the Land Disputes Courts' Act, Cap 216, [R.E 2019] moving the court to grant him extension of time within which to file an appeal to this Court against the decision of the District Land and Housing Tribunal for Kiteto (the trial Tribunal) in Application No. 2 of 2018 which was delivered on 21/2/2019. The application is supported by an affidavit deposed by the Applicant. The Respondent contested the application by filing a counter affidavit deposed by himself.

Facts leading to this application are as follows: The late Wilfred Ndetaulwa Mungure unsuccessfully sued the Respondent herein at the trial Tribunal for trespassing into his land measuring 35 acres located at Kimalaunga hamlet, Mbigiri Village within Kiteto District. The Applicant claimed to have bought the suit land from one Dr. Makoi. Upon hearing the parties, the trial Tribunal found out that the Applicant did not prove ownership over the disputed land. He dismissed the application.

The Applicant was aggrieved by the decision but did not file the appeal on time as, according to the affidavit and supporting documents, he unfortunately fell sick and was admitted at Jakaya Kikwete Cardiac Institute where he was diagnosed to have Hypertension disorder. According to paragraph 3 and 4 of the affidavit in support of the application, the late Ndetaulwa Mungure was admitted in March 2019. The moment he was discharged, he found himself time barred because he was discharged on 22/8/2019 and time had lapsed since 7/4/2019. After he was discharged from Hospital, he filed the application seeking for an enlargement of time out of which he could challenge the trial Tribunal judgment. Unfortunately, he died on 23/2/2020.

Submitting on the substance of the application, informed the Court that the delay to file the appeal was due to the sickness that befell the Applicant's late father. Mr. Nkingwa referred to paragraph 3 of the Applicant's affidavit stating that the late Wilfred Ndetaulwa Mungure fall sick before the delivery of the judgment in the District Land and Housing Tribunal and attended

different hospitals before he was admitted at Jakaya Kikwete Cardiac Institute in March 2019 up to August 2019. He fortified that sickness amounts to sufficient cause for extension of time citing the case of ***Pimak Profesyonel Mutfak Limited Sirketi Vs. Pimak Tanzania Limited and Farhaabduiah Noor***, Misc. Commercial Application No. 55 of 2018 (unreported). Mr. Nkingwa added that there is a serious legal issue to be determined by this Court in the intended appeal since the trial Tribunal ruled in the Respondent's favour while the suit land has a certificate of occupancy in the name of the late Ndetaulwa Mungure. He referred to the decisions in ***Principal Secretary Ministry of Defence and National Service Vs. Devram P. Valambhia*** [1992] TLR 387 and ***James Anthony Ifada Vs. Hamis Alawi***, Civil Application no. 482 of 2019 (unreported), where it was held that illegality in the judgment sought to be appealed against amounts to good cause. Mr. Nkingwa therefore implored the court to grant the application so that this Court addresses the alleged illegality.

Contesting the application, Mr. Kong'oke, stated that the late Wilfred Ndetaulwa Mungure was never sick on the stated dates as he was appearing in Taxation Cause No. 13 of 2019 which was pending before the trial Tribunal. The learned counsel added that the late Wilfred Mungure was never admitted in any hospital on the material dates as stated under paragraph 3 of the Respondent's counter affidavit which was never controverted by the Applicant. To that effect he cited the case of ***East African Cables (T) Limited Vs. Spenco Services Limited***, Misc. Application No. 61 of 2016 (unreported). Mr. Kong'oke also stated that the cited case of ***Pimak***

Profesyonel Mutfak Limited Sirketi Vs. Pimak Tanzania Limited and Farhaabduiah Noor, (supra) is inapplicable in the case at hand since the late Ndetaulwa Mungure was never sick.

According to Mr. Kong'oke, the Applicant's affidavit does not reflect any illegality in the impugned judgment other than the Applicant's averment that the trial Tribunal was wrong in deciding in favour of the Respondent while the suit land has a certificate of occupancy in the name of the Applicant. In Mr. Kong'oke's view, this is a matter of fact which cannot amount to illegality as portrayed by the Applicant's counsel.

After a thorough consideration of the written submissions of the counsel for the parties herein and the respective affidavits, it is pertinent that I consider whether the delay in filing the appeal in this Court was necessitated by sufficient cause. Notably, sufficient cause for the delay is *conditio sine qua non* for extension of time to be granted. The Court of Appeal decision in ***Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 (unreported) is instructive in this respect. It was held:

"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*

- c) *The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) *If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

This position has been followed in a number of cases, including the Court of Appeal decisions in ***Benedict Mumello Vs. the Bank of Tanzania***, Civil Appeal No. 12 of 2002 (Unreported); ***Kalunga and Company Advocates Vs. The National Bank of Commerce Ltd***, Civil Application No. 124 of 2005 (Unreported) and ***Maneno Mengi Limited and 3 Others Vs. Farida Said Nyamachumbe and Registrar of Companies*** [2004] TLR 391.

What constitutes good cause is not provided in our laws, but the Court of Appeal in the case of ***Regional Manager, TANROADS Kagera Vs. Ruaha Concrete Company Limited***, Civil Application No. 96 of 2007 (unreported), the Court observed the following regarding sufficient cause;

"What constitutes 'sufficient reason' cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the Applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."

The question is whether the Applicants' application can be sufficiently covered by the "good cause" circumstances above. The Applicant submits that what is stated in his affidavit explains good cause for the delay. In the affidavit in support of this application, at paragraph 3, the Applicant stated the reasons for the delay which he stated that the late Ndetaulwa Mungure

fell sick and was diagnosed with Hypertension disorder before the delivery of the Tribunal judgment. The deceased was admitted at different hospitals, and later in March 2019 to August 2019 he was admitted at Jakaya Kikwete Cardiac Institute and upon his discharge, he found himself out of time. To that effect a Medical certificate (annexure P2) to support his averment was annexed to support his argument.

I have carefully gone through the said medical certificate, and I agree with the Respondent that it does not show that the late Ndetaulwa Mungure was admitted. The certificate shows the history of the deceased's sickness, and unfortunately it was neither signed by the Doctor who attended him nor was it stamped. But, it is undisputed that the said Ndetaulwa Mungure died on 23/2/2020. It cannot not therefore, be safe to assume that he was not sick, even if it is not proved that he was admitted. The medical report sufficiently proves that the late Ndetaulwa Mungure was sick and he underwent medical check-up at Jakaya Kikwete Cardiac Institute on 15/3/2020.

The contention by the Respondent's counsel that the late Ndetaulwa Mungure was not sick as he used to attend Taxation Cause No. 13 of 2019 is unfounded because the annexure he attached to his counter affidavit does not show the deceased's attendance in the trial Tribunal but his reply to Decree Holder's Bill of Cost. Further, the argument that he was attending the Tribunal does not imply that he was not sick. I agree with the Applicant's counsel that the delay was due to sickness of the late Mr. Ndetaulwa Mungure who later died out of that sickness. Sickness acts as sufficient cause

in extension of time as it was stated in ***Pimak Profesyonei Mutfak Limited Sirketi Vs. Pimak Tanzania Limited and Farhaabdulah Noor*** (supra), the case cited to me by Mr. Nkingwa. It is therefore the finding of this Court that the Applicant's delay to file the instant application was necessitated by sufficient cause.

Further, the Applicant in his affidavit averred that there is an illegality in the impugned judgment which necessitates the intervention of this Court. However, the said illegality was not made apparent as rightly contended by Mr. Kong'oke. Where a party seeks to rely on an illegality in the decision sought to be challenged, such an illegality has to be apparent on the face of record and it must be of sufficient importance. This was amplified in ***Lyamuya Construction Company Ltd*** (supra) in the following words:

"Since every party intending to appeal seeks to challenge a decision either on points of law or fact, it cannot in my view, be said that in Valambhia's case, the Court meant to draw a general rule that every Applicant who demonstrate that his intended appeal raises points 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 face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process."

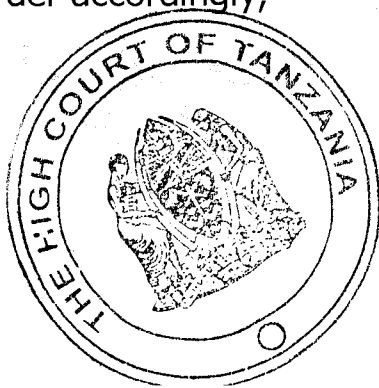
In a subsequent case of ***Samwei Mbunsiro Vs. Chacha Mwikwabe***, Civil Application No. 539/08 of 2019 (unreported), it was held;


"As often stressed by the Court, for this ground to stand, the illegality of the decision subject of challenge must clearly be visible on the face of the record, and the illegality in focus must be that of sufficient importance."

In the application at hand, the Applicant's alleged illegality is that the trial Tribunal erred in declaring the Respondent the lawful owner of the suit land while there was certificate of occupancy in the name of the Applicant. As rightly argued by Mr. Kong'oke, this is subject to proof. Such alleged illegality is neither reflected in the affidavit nor in the decision subject to challenge. In the circumstance, I am inclined to hold that the alleged illegality is not apparent. I therefore agree with the learned advocate for the Respondent that the alleged ground of illegality for extension of time in this respect is unsubstantiated.

On the strength of the above reasons and the authorities cited, this Court holds the view that the delay for filing the appeal in this Court was necessitated with sufficient cause; that is, Mr. Ndetaulwa Mungure's sickness. The application is therefore allowed. The Applicant is to file the intended appeal within 14 (fourteen) days from the date of this ruling. Each party shall bear their own costs for this application.

Order accordingly,




Y. B. Masara
JUDGE
16th December, 2020.