

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT TANGA**

**MISC. LAND APPLICATION NO. 41 OF 2020**

(Originating from Land Application No. 9 of 2017

of the District Land and Housing Tribunal for Tanga at Tanga)

**FLORA MSIRA MBWANA** (Administrator of estate of the late

**WALLECE PHILIP MBWANA) ..... APPLICANT**

**VERSUS**

**AYUBU CLEMENT ..... RESPONDENT**

**RULING**

**MKASIMONGWA, J.**

Flora Msira Mbwana (Administrator of estate of the late Wallace Philip Mbwana) applies for extension of time in which to file appeal against judgment and decree in Land Application Number 77 of 2017 of Tanga District Land and Housing Tribunal of Tanga delivered on 16<sup>th</sup> March, 2020.

The Application is made by way of Chamber Summons filed under Section 41 (2) of the Land Disputes Court Act [Cap 216 R. E 2019] and any other enabling provision of the law and it is supported by affidavit sworn by George Raphael an Advocate duly instructed to represent the Applicant. In response to the application the Respondent one Ayubu Clement contested it and to that effect the later filed a Counter as Affidavit.

On the date the application was placed before me for hearing. Mr. Yona Lucas, learned advocate appeared on behalf of the Applicant whereas the Respondent appeared in person. On being so invited to do, Mr. Lucas argued the Applicant's case to the effect that the Applicant was a party in Land Application No. 77 of 2017 of Tanga District Land and Housing Tribunal which was terminated against her and in favour of the Respondent by a judgment of the Tribunal dated 16<sup>th</sup> March, 2020. Being aggrieved by the Judgment and Decree of the Tribunal in the Application, the Applicant thought of challenging them by appeal to this Court. He could not, however, timely file the appeal hence this Application for extension of time in which to appeal. As to why the Applicant could not file the Appeal within the prescribed limitation period, Mr. Lucas stated that as it is averred in the Affidavit in support of the Applicant; immediately after the contested judgment, the Applicant's son fell sick and was hospitalized nursed by the Applicant. As such the applicant was not in a position to do the needful so that the appeal is timely lodged. Mr. Lucas, pleaded the court that it finds the reason sufficient and consequently grant the Application.

On the other hand the Respondent submitted that the submission made in respect of the applicant's case lacks merit. He stated that the

reason advanced as to why the Applicant did not lodge appeal within time prescribed by law is said to be the fact that she was, during the period, nursing her sick son. The contention, however, is not exhibited if the son was at any time admitted in hospital; instead the Affidavit in support of the Application annexes with it the Hospital Laboratory Tests Results. The annexure again, shows that the patient submitted himself to the hospital just for checkups. The Respondent contented further that the alleged son is over thirty (30) years old. Considering the age of the son it was not necessary for the Applicant to daily supervise him. He concluded that this Application is just another way intended to delay justice and the same should be dismissed.

I have considered the submission made by the parties. Section 41 (2) of the Land Disputes Courts Act [Cap 216 RE 2019] under which this Application is brought reads as follows:-

*"Any appeal under subsection (e) may be lodged within forty five days after the date of the decision or order.*

*Provided that the High Court may for good cause extend the time for filing an appeal either before or after the expiration of such period of forty five days"*

Going by the above provision of law it is clear that it is in the discretion of the court to extend time in which to file an appeal against decision or order passed by the District Land and Housing Tribunal in the exercise of its original jurisdiction. For the court to exercise such discretion, it must be satisfied that there is good or sufficient cause for delay is established. The issue to be decided here is whether the Applicant has exhibited to the court sufficient or good cause. It is the Applicants' averment under Paragraphs 3 and 4 of the Affidavit in support of the Application that the contested judgment was delivered on 16<sup>th</sup> March, 2020 and soon after when the judgment was delivered the Applicant's son, one Philip Wallece Mbwana, fell seriously sick and admitted to Hospital. Under Paragraph 5 of the Affidavit the deponent averred to the effect that Philip Wallece Mbwana was discharged from hospital on divert dates from 24<sup>th</sup> March, 2020 to 30<sup>th</sup> May, 2020. The Affidavit attaches with it the Applicant's son's Medical Certificate – Annexure GR1. According to GR1, the Applicant's son is 35 years old. On 24/03/2020 he attended at Al-Rahima Hospital, Zanzibar: On 2/04/2020 he attended at Alpha Medical Laboratory Ihumwa Dodoma. On 03/04/2020 he attended at Alpha Medical Laboratory, Ihumwa Dodoma. On 18/05/2020 he gain attended at Alpha Medical Laboratory and on

20/05/2020 he attended at Decca Polynics Ihumwa. As stated by the Respondent, the Applicant's son was in the hospitals for Laboratory Tests. It is not shown if he was at any time admitted in Hospital anywhere. The Applicant's contention that the son was admitted in hospital is therefore not supported as it was purported to be by the medical certificates.

As again stated by the Respondent the Applicant was over 30 years old. Going by Annexure GR1 he was by last year 35 years old. Keeping in mind the age of the Applicant's son and the fact that the son was never admitted in Hospital leaves the court with no any option but to find that the Applicant acted unreasonably during the Appeal period the fact which it can be reasonably resolved against her that she has not established a good cause warranting extension of time.

In event this application fails. The same is therefore dismissed with costs.

**DATED** at **TANGA** this 18<sup>th</sup> of May, 2021.



  
E. J. Mkasimongwa

**JUDGE**

**18/05/2021**