

**IN THE HIGH COURT OF TANZANIA  
(MUSOMA DISTRICT REGISTRY)**

**AT MUSOMA**

**MISCL. LAND APPEAL NO. 7 OF 2020**

*(Arising from Misc. Application No. 282 of 2019 in the District  
Land and Housing Tribunal for Tarime at Tarime)*

**NYANDO OJOO ..... APPELLANT**

**VERSUS**

**UROMI KISARE .....RESPONDENT**

**JUDGEMENT**

*6<sup>th</sup> March and 25<sup>th</sup> March, 2020*

**KISANYA, J.:**

This appeal originates from Miscellaneous Application No. 282 of 2019 filed in the District Land and Housing Tribunal by the appellant requesting for an order for extension of time to appeal against decision made by Tai Ward Tribunal. The appellant averred that he failed to appeal in time after falling sick immediately before the date of decision. The District Land and Housing Tribunal dismissed the application on the ground that the appellant had failed to establish reasonable and sufficient cause for extension of time.

Dissatisfied, the appellant has filed an appeal before this Court on the ground that:

- 1. The Honourable Learned Chairman erred in law and fact to dismiss Misc. Application No. 96 of 2017 (sic) filed by the appellant without consider (sic) the bus tickets and the snap picture which the appellant tendered before the Tribunal to prove that he was sick.*

The facts leading to this appeal are that: The appellant instituted Land Application No. 12 of 2018 before Tai Ward Tribunal. He claimed that the respondent had encroached on the piece of land located at Nyamagongo Village. The said application was dismissed for want of merit on **23<sup>rd</sup> October, 2018**.

Upon failing to appeal within forty five days as required by the law, the appellant filed an application for extension of time to file appeal in the District Land and Housing Tribunal on **24<sup>th</sup> April, 2019**. The said application was made by way of Chamber Summons supported by the appellant's affidavit. In the said affidavit the appellant stated that he failed to appeal in time because he was sick and compelled to travel to Moshi Hospital where he was admitted. He attached the bus tickets and the Discharge Summary to prove this fact.

The respondent opposed the application on the ground that the application was time barred as it was filed six months after the date of judgement.

After evaluating the evidence, the District Land and Housing Tribunal

dismissed the application on the aforesaid reasons, and hence, the appeal at hand.

When this appeal came up for hearing, both parties appeared in person, unrepresented.

In his submission, the appellant reiterated that, he failed to appeal in time because he was sick. He submitted that, he had travelled to Moshi for medical grounds and returned on **29/11/2018**. The appellant argued that the bus tickets and the Discharge Summary attached to the affidavit filed before the District Land and Housing Tribunal show good and sufficient cause.

Upon being probed by this Court, the appellant conceded that paragraphs 4 and 5 of the affidavit were not verified. However, he stated that the said defect was not fatal. The appellant urged this Court to consider that he was sick and allow the appeal.

In response, the respondent submitted that the appellant's application was dismissed because he did not advance good cause for his failure to appeal in time. The respondent argued further that the picture appended to petition of appeal was not tendered at the hearing of the application. He therefore prayed for this Court to dismiss the appeal with costs.

I have gone through the evidence on record and the submissions by both parties. The main issue is whether the appellant advanced good and reasonable cause for his failure to appeal in time. The time

limitation to appeal against decision made by the Ward Tribunal as in the case at hand is 45 days from the date of decision or order which the appeal is sought. This is pursuant to section 20(1) of the Land Disputes Courts Act [Cap. 216, R.E. 2002]. However, the District Land Housing Tribunal can extend the time if there is sufficient grounds to such effect as provided for under section 20(2) of the Land Disputes Courts Act [Cap. 216, R.E. 2002] which reads:

*"Notwithstanding the provisions of subsection (1), the District Land and Housing Tribunal may for good and sufficient cause extend the time for filing an appeal either before or after the expiration of forty five days."*

In order the District Land and Housing Tribunal to excise its discretion of extending the time to appeal, the applicant is duty bound to advance good and sufficient cause for failure to appeal in time.

It is on record that the application before the District Land and Housing Tribunal was made by way of Chamber Summons supported by an affidavit. It is trite law that an application supported by a defective affidavit is incompetent before the Court or Tribunal. One of the components of affidavit is verification clause. It shows the source of information averred in each paragraph of the affidavit. An affidavit which lacks a proper verification clause by failing to show source of information is defective and cannot be acted upon. This position was underscored in **Silima Vuai Foun Vs Registrar of**

**Cooperative Societies and 3 Others**, Civil Appeal No. 36 OF 1994, CAT at Zanzibar (unreported) when the Court of Appeal held:

*"The principle is that where an affidavit is made on an information, it should not be acted upon by any court unless the sources of that information are specified. This was reiterated by the Court of Appeal for Eastern Africa in the case of STANDARD GOODS INCORPORATION LTD v HAHAKHOBAND NATHU & CO. (1950) 17 E.A.C.A 99. Again, in the case of BOMBAY FLOUR MILL v HUNIBHAI M. PATEL (1962) E.A. 803 it was held that as the affidavit did not state the deponent's means of knowledge or his source's of information and belief, the affidavit was defective and incompetent, the application based on the affidavit was dismissed."*

The affidavit in support of the application before the District Land and Housing Tribunal did not state the source of information averred in paragraphs 4 and 5 therein. The appellant conceded this fact in his submission. Failure to verify information in the said paragraphs rendered the affidavit incurably defective and the application ought to have been struck. This is when it is considered that the reasons of sickness to the extent of travelling to Moshi Hospital for medical ground were stated in those paragraphs. As stated herein, the Tribunal was not supposed to act on an affidavit with unverified information.

Even if it is considered that affidavit is not defective, the appellant is duty bound account for his failure to appeal within time. It is now settled that, delay of even a single day is required to be accounted for. [See **Bushiri Hassan vs Latifa Lukio, Mathayo**, Civil Application No. 3 of 2007, Court of Appeal of Tanzania (unreported)]

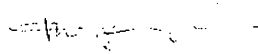
I agree with the findings of the District Land and Housing Tribunal that the Discharge Summary attached to the affidavit shows that the appellant was admitted from 22/10/2018 to 29/10/2018. Thus, at the time of discharge, the appellant had 39 days of filing his appeal. In his affidavit, the appellant did not state the reasons for failing to appeal within the said 39 days.

Further, the bus tickets attached to the affidavit shows that the travelled from Dar es Salaam to Mwanza on 30/11/2018. He did not prove as to when and how he came from Moshi. Also, the evidence as to when the appellant arrived in Tarime is wanting. Even if it assumed that he arrived on 1<sup>st</sup> or 2<sup>nd</sup> December, 2018, the present application was filed more than four months later, on **24<sup>th</sup> April, 2019**. Again, the applicant did not account for failing to appeal from **December, 2018 to April, 2019**.

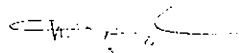
From the foregoing, I find the appellant failed to show the good and sufficient cause for the District Land and Housing Tribunal to extend the time to appeal. I accordingly dismiss the appeal with costs for want of merits.

It is so ordered.

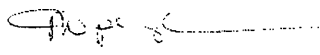
**DATED at MUSOMA this 25<sup>th</sup> day of March, 2020.**

  
E.S. Kisanya  
**JUDGE**  
25/3/2020

**Court:** Judgement delivered in Chamber this 25<sup>th</sup> day of March, 2020  
in the presence of the Appellant and the Respondent.

  
E.S. Kisanya  
**JUDGE**  
25/3/ 2020

**Court:** Right of appeal is explained to the parties.

  
E.S. Kisanya  
**JUDGE**  
25/3/ 2020