

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TANGA

MISC. LAND APPLICATION NO. 97 OF 2018

(Arising from Land Application No. 04 of 2016, in
the Land District and Housing Tribunal)

VERONICA FRANCIS (Suing as an Administratrix of the Estate
of the late Verediana Francis) **APPLICANT**

VERSUS

PRUDENCIA NDUWAMBO.....**1stRESPONDENT**

MRS JOSEPH MBUNA (Sued as an Administratrix of the Estate of
the late Josphe Mbuna)..... **2ND RESPONDENT**

RULING

MKASIMONGWA, J.

In the District Land and Housing Tribunal for Lushoto, the Applicant, VERONICA FRANCIS (As an Administratrix of the estate of the late Verediani Francis) lost a claim for land against PRUDENCIA NDUWAMBO and Mrs. JOSEPH MBUNA, as Administratrixes of the estates of the late Fundi Nduwambo and Joseph Mbuna, respectively. She is dissatisfied by that decision of the Tribunal which was pronounced on 24/09/2018. As such she wishes to appeal to this Court challenging it. She could, however, not timely lodge the Appeal hence this application for extension of time in which to appeal. The Application is made by way of Chamber Summons supported by Affidavit and it was filed under Section 41 (2) of the Land Disputes Court Act [Cap 216 R.E 2002],

read together with Government Notice No. 28 Vol. 97 of 2016 and Section 95 of the Civil Procedure Code [Cap 33 R.E 2002].

The Respondents contested to the Application and when the same came for hearing, before me, appeared the Applicant in person and Ms. Caroline Ngailo advocate representing the Respondents.

In her submission, as she had again averred in the Affidavit filed in support of the chamber summons, the Applicant contended that, sometime on 24/09/2018, a day before when the contested judgment was delivered, she fell sick and got admitted in Lushoto District Hospital until on 10/10/2018 when she was discharged from Hospital. As she was not feeling well, the Applicant again submitted herself to the hospital where she was found suffering from ulcers, low blood pressure, malaria and typhoid. She was advised to take light diet hence became weak until sometime in November, 2018 when she became a little bit of good health. On 20/11/2018 the Applicant went to her lawyer so that necessary steps be taken to have the case proceed. Unfortunately she did not meet the lawyer as the later was bereaved hence travelled for that purpose. She consulted another lawyer who according to his work schedule promised to work on the matter later on 27/11/2018. Luckily, the former lawyer came back to his work station and drafted the pleadings filed in Court. In that premise she could not timely file the Appeal against the contested decision hence this application in which she prays the Court to grant.

On the other hand Miss Caroline Ngailo, referred the Court to the decision in the case of **Wambele Mtumwa Shahame vs**

Mohamed Hamis: Civil Reference No. 8 of 2016, CAT (Unreported) which lists factors to be considered by the Court in determining whether or not to extend the period of time limited by the law. She stated that the Applicant has shown by affidavit that she fell sick and therefore was admitted in hospital on 24/09/2018 and got discharged on 10/10/2018. The Affidavit is however silent as to the allegation that though she was discharged, she was still suffering hence submitted herself to the Hospital for treatment. The learned advocate again referred the Court to the decision in the case of **Kalunga & Co Advocates vs. NBC Ltd:** Civil Application No. 124 of 2002, CAT where the Court stressed that there must be material on which the Court can exercise its discretion to extend time. As regards to that there are no such materials brought to the Court which fact makes the application baseless.

The learned counsel stated further that in the Application, the Applicant asserts that from the disease, she again suffered financial difficult, which again caused the delay. She submitted that financial difficulties had never been a sufficient cause for the Court to extend time. To support the submission Miss Caroline referred the Court to the decision in the case of **Joseph Ernest Manguku and 31 others vs International School of Tanganyika:** Misc. Application No. 42 of 2019, HCT (Unreported) where the Court stated that financial constraints is not a sufficient ground for extension of time. Miss Caroline added that even if the appeal is preferred there are no chances for the same to succeed. She prayed the Court that the Application be dismissed with costs.

In a short rejoinder, the Applicant submitted that, when she came back home from the hospital, where she was admitted, she went to the trial District Land and Housing Tribunal and requested for a copy of the contested judgement. She was therefore diligent in the matter. She added that in the case there is ample evidence to prove that the land in dispute belongs to her deceased mother. She reiterates the prayer to have the Application been granted.

That is all what was submitted by the respective parties. I have considered the submission. As it was held stressed in the case of **Wambele Mtumwa Shahame** (Supra), the Court of Appeal of Tanzania quoting, with approval, its earlier decision in the case of **Bertha Bwire vs Alex Maganga**: Civil Reference No 7 of 2016 that:

“It is trite that extension of time is a matter of discretion on the part of the court and such discretion must be exercised judiciously and flexibility with regard to the relevant facts of the particular case. Whilst it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the courts discretion, the court is enjoined to consider, inter alia, the reason for the delay, the length of delay, whether the Applicant was diligent and the degree of prejudice to the respondent if time is extended”.

In the case at hand the Applicant alleges and exhibits sickness as the reason for the delay. She has shown that apart from being discharged from hospital where she was being admitted, the Applicant underwent the prolonged period of sickness. In law the Applicant ought to have lodged the Appeal in 45 days of the

contested judgement. As the judgement was delivered on 26/09/2018 the Appellant ought to have lodged the Appeal by 10/11/2018. This Application was brought for filing on 05/12/2018. The Applicant thus was lagging behind time for about 25 days. As from 10/11/2018 to 20/11/2018 the Applicant shows to have been weak from the sickness. This is because she was advised to take light meals. On 20/11/2018 she came to her lawyer so that the pleadings are prepared. Whether or not the Applicant needed the lawyer in my view that depended much on the nature of the pleadings. This is an Application commenced by the Chamber Summons which properly cited the enabling provision of the law. For a village woman as it is for the Applicant, she required the legal assistance to have the pleadings been properly drafted. The lawyer drafted the pleadings and enabled the Application be filed on 05/2/2018. In my considered opinion, the Applicant had reason for delay, she was diligent and that she managed accounting for each day of delay.

In the circumstance, I will grant this Application and therefore extend the time in which to appeal as prayed. The Applicant shall file the Appeal within 45 days from today.

Dated at Tanga this 11th of March, 2020.




E. J. Mkasimongwa

JUDGE

11/03/2020