

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 17 OF 2019

(Arising from Misc. Land Application No. 16/2018, Misc. Land Application No. 41/2017, Land Appeal No. 9/2015 all from this Honourable Court and the Original Land Application No. 15/2010 of Korogwe District Land and Housing Tribunal)

MSAMAKA VILLAGE COUNCIL.....APPLICANT

-VERSUS-

VICTORIA VITALES SHENYAGWA *(Administratrix of the Estate of the Late*
VITALES SHENYAGWA.....1ST RESPONDENT

HOZA SHEHOZA *(Administrator of the Estate*
of the Late YOHANA SHENYAGWA).....2ND RESPONDENT

REUBEN PETRO.....3RD RESPONDENT

RULING

Date of last order:10/08/2021
Date of ruling:20/09/2021

AGATHO, J.:

This Application has stalled in this Court for a long time. The Applicant moved this Court to exercise its discretionary powers to extend time to give notice of intention to file appeal to the Court of Appeal. The Applicant moved the Court through chamber application made Under Section 11 (i) of the Appellate Jurisdiction Act, [CAP 141 R.E 2002] supported with

affidavit of Ahmad Juma Mtangi (chairman). The Respondents in objecting the said applications they filed their joint Counter Affidavit.

In exercising power to extend time prescribed by the law the Court is guided by two key principles:

- 1) The Applicant must show sufficient cause for the delay.
- 2) The Applicant must account for each day constituting the delay.

The recounting this application, it is not new, there other applications made by the Applicant which were struck out. First, in my perusal of the Court record of this case I found the Ruling of Aboud, J with respect to the same application before this Court. The parties were the same. But the difference being that, that the application for extension of time to give notice of intention to appeal to Court of Appeal of Tanzania was Miscellaneous Land Application No. 41 of 2017 arising from Land Case No. 9 of 2015 of High Court at Tanga originating from Land Application No. 15 of 2010 of Korogwe District Land and Housing Tribunal. The application was supported by Affidavit of Abdulrahman Athumani Mdoe. And on 21/08/2017, Aboud J., dismissed the application for lack of sufficient reason.

In the present application, the application is supported by the Affidavit of Ahmad Juma Mtangi (Village Chairman). The orders sought are:

- a) That this Court be pleased to extend time for giving notice of intention to appeal from a judgment of the High Court in Miscellaneous Land Application No. 17 of 2017 to Court of Appeal of Tanzania which was refused by this Court on 21/08/2017.
- b) Any other order(s) as the Court may be justifiably grant.
- c) Costs to abide to the decision in the main case.

My reading of the Applicant's Affidavit and Respondent's Counter Affidavits shows that there are two main issues:

- 1) Whether there is sufficient cause to persuade the Court to extend time.
- 2) Whether the delayed days have been accounted for.

Starting with the second issue the Applicant has averred in paragraph 6 of the Affidavit that the Ruling was delivered on 21/08/2017 and copy of the Ruling was given to the Applicant on 19/03/2019. This is in respect of Miscellaneous Land Application No. 41 of 2017.

The law provides that notice of intention to appeal has to be filed within thirty (30) days from date of Ruling. If the Ruling was given on

21/08/2017, the thirty days ends on 20/09/2017. But the Applicant claims that they were not supplied with the copy of Ruling until 19/03/2019 which is one (1) year and six months later. Apart from averment in the affidavit no evidence is given to prove that the delay was caused by the Court. where delay was attributed by the Court especially by delaying to supply a copy of proceedings and judgment then that constitutes a good ground for extension of time as it was held in **Juma Posanyi Madati v Hambasia Nkella Maida, Civil Application No. 230 of 2016** (unreported). The Court of Appeal of Tanzania held in **Benedict Mumello v Bank of Tanzania, Civil Appeal No. 12 of 2002** that where the delay is attributed by the judicial officer then the Court should extend time. But evidence must be given to that effect. The latter was also held in the case of **Alliance Insurance Corporation Ltd v Arusha Art Ltd, Civil Application No. 33 of 2015** (unreported).

Again, if the Court delayed issuing the copy of the ruling up to 19/03/2019, the application which is before this Court was filed on 13/05/2020 which is almost 1 year and 2 months later. This is a serious negligence which this Court cannot condone. I have taken notice of the Respondents being deceased but that has nothing to do with the Applicant's delay file the notice of intention to appeal to Court of Appeal of Tanzania. The delay is

exorbitant. The Applicant ought to account for each day of the delay as it was stated in **Finca (T) Limited and Another v Boniface Mwalukisa, Civil Application No. 589/12 of 2018** (unreported). Failure to account for each day delayed deprives the Court power to exercise discretion to extend time.

Furthermore, the Court of Appeal of Tanzania has held that where there is illegality that constitutes sufficient cause to extend time of limitation. That was held in **Principal Secretary Ministry of Defence and National Service v Devran Valambia [1992] TLR 387**; and in the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women Christian Association of Tanzania in Civil Application No. 2 of 2010 CAT at Arusha**. But in the instant application the issue of illegality in the Ruling of 21/08/2017 did not clearly arise. However, the illegality somehow mentioned on para 6 (v) of the Applicant's Affidavit is unclear. The paragraph states as follows:

"That the Applicants elementary knowledge to the effect that it was illogical, illegally, wrongfully move to claim ownership as such nullifying the entire orders and proceedings righty from the very inception of the instant disputes"

The above quoted averment can hardly be comprehended. It is not clear who denied ownership, and it is equally unclear where the illegality arises, and in respect of what decision.

Looking at the decision of Land Appeal No. 9 of 2015 per Amour S. Khamis J., the applicant is not claiming that that decision had any illegality. I should add that the Judgment of Amour S. Khamis J., disposed the matter on merits and gave clear position of the law. No illegality at all.

Moreover, the instant Application relates to Ruling dated 21/08/2017 which was regarding the Miscellaneous Land Application No. 41 of 2017.

In the end this application fails for lack of sufficient cause to persuade the Court to exercise its discretion to extend time. I dismiss it with costs.

DATED at TANGA this 20th Day of September 2021.



U. J. AGATHO

JUDGE

20/09/2021

Date: 20/09/2021

Coram: Hon. Agatho, J

Applicant: Gerald Donati Mapunda – VEO (Applicant's representative)

Respondents: Present

B/C: Zayumba

Court: Judgment delivered on this 20th day of September, 2021 in the presence of the Applicant representative (Gerald Donati Mapunda – VEO), and the Respondents.




U. J. AGATHO

JUDGE

20/09/2021

**I CERTIFY THAT THIS IS
A TRUE COPY OF THE ORIGINAL**

Court: Right of Appeal fully explained.




U. J. AGATHO

JUDGE

20/09/2021

DEPUTY REGISTRAR
DATE _____