

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISCELLANEOUS CIVIL APPLICATION No. 06 OF 2020**

(Arising from the decision of the High Court of Tanzania at Mwanza in Land Appeal  
No. 68 of 2019.)

**PATRICE SHIJA SHILONDELA As Administrator of the**

**Estate of the Late SHIJA SHILONDELA.....APPLICANT**

**VERSUS**

**KULWA KANOSHI LUMA As Administrator of the**

**Estate of the Late KANOSHI LUMA .....RESPONDENT**

**RULING**

14<sup>th</sup> December, 2020 & 15<sup>th</sup> February, 2021

**TIGANGA, J**

This is an application in which two sets of substantive orders are sought, one, for extension of time for making application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court in Land Appeal No. 68 of 2019 delivered on 25/03/2020 by Hon. Mgeyekwa, J, two, leave to appeal to the Court of Appeal of Tanzania against the decision of this court in Land Appeal No. 68 of 2019 delivered on 25/03/2020 by Hon. Mgeyekwa, J,

The other order asked is any other relief that the Honourable court may deem fit and just to grant to the applicant.

The application was made by the chamber summons under section 11(1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019] and Section 47(2) of the Land Disputes Court Act [Cap 216 R.E 2019]

The brief background of this application is that before the District Land and Housing Tribunal for Chato, in Land Application No. 08 of 2019 the appellant sued the respondent for orders of declaration that the land in dispute was his.

The District Land and Housing Tribunal held in the favour of the respondent, the decision which aggrieved the appellant who decided to appeal to the High Court of Tanzania, in HC Land Appeal No. 68 of 2019. The High court in that appeal upheld the decision of the District Land and Housing Tribunal. That decision further aggrieved the appellant who commenced the appeal process. In such an endeavor, he found himself to be late; it is when he filed this application in which he asked for the two orders as indicated above.

The application was by the chamber summons supported by the affidavit of the applicant in which the reasons for the application are



that, the applicant could not file the application for leave in time because he fell sick and was admitted for treatment at a traditional healer from 28/03/2020 up to 08/06/2020 when he returned. He supported that allegation with a letter of introduction written by the street government chairman of Shamaliwa "B" one Ezekiel Mabilika Madata, which was annexed to the application as annexure 3, which introduced the applicant as the resident of his street. That letter was indorsed to, by the person who did not introduce himself that;

*"Ni kweli Mtajwa hapo juu aliondoka tarehe 28/03/2020 kwenda kwenye matibabu Geita ya Kienyeji alikuwa akisumbuliwa na miguu- Amerudi tarehe 08/06/2020".*

On that aspect the respondent filed the counter affidavit in which the respondent disputed the facts deposed in the affidavit filed in support of this application and instead deposed that, annexure 3 is not the medical document, as such, it cannot be relied upon and its authenticity is highly questionable.

At the hearing of the application, the applicant was represented by Mr. Mussa Nyamwero, Advocate while the respondent fended for himself, unrepresented. In his submission in support of the application Mr. Nyamwelo, Advocate, reiterated the contents of the affidavit filed in support of the application, he insisted that the applicant fell sick

immediately after the delivery of the judgment and went to the traditional healer where he was admitted for treatment since 28/03/2020 up to 08/06/2020. Mr. Nyamwero submitted further that, the applicant did not sit idle, but was receiving the treatment as indicated and actually proved by the annexure P.3. According to him, immediately after his return, he started to search for Advocates before he got him on 13/06/2020.

He also submitted that, the point as to why the leave is sought is that the High Court in HC Land Appeal No. 68 of 2019, relied on the evidence which do not form part of the record of the trial tribunal. Citing an example of the evidence relied upon, the counsel for the respondent submitted that the evidence of Joseph Masele the Chairman of Katende village did not form part of the evidence of the trial tribunal and that this caused injustice to the applicant.

To buttress his argument, he cited the court of Appeal decision in the case of **Bulyankhulu Goldmine Ltd and two others vrs Petrolube (T) Ltd and Another**, Civil Application No. 364/16 of 2017 in which the decision of **Rutagatina C.L vs Advocates Committee & Another**, Civil Application No. 98 of 2010 was cited, he asked that on that base the application be allowed as prayed.



In his submission in reply, the respondent submitted that, the allegation of sickness has not been proved by any evidence therefore, lack of evidence leaves the important aspect of accounting all days of delay un cleared.

Regarding the use of the evidence of Selemani Lubwega and Masele Sunzu, he submitted that, both witnesses were part of the record and therefore, formed a base of the findings of the trial court. It was therefore proper for the High Court to discuss the evidence. He asked for the leave to be rejected for the reasons given.

In rejoinder the applicant did not come up with any new issue he almost reiterated the content of the submission in chief and asked the court to allow the application as prayed.

Now in this case the applicant was supposed to file an application for leave under rule 10 of the Court of Appeal Rules, 2009 within 14 days. He failed to do so in time, instead he filed the same almost eighty days later, that means the applicant delayed for about 66 days, that is why he decided to first secure extension of time to file application for leave. As earlier on pointed out, this application has two segments, **first**, an application for extension of time within which to apply for leave to appeal to the Court of Appeal, **second**, the application for leave to

appeal to the Court of Appeal of Tanzania. Realistically, the second segment of the application is consequential to the grant of the first segment, for that reason I will start with the first segment that is an application for extension of time within which to apply for leave to appeal to the Court of Appeal.

The application for extension of time in our jurisdiction is not a virgin ground; the law and decided cases have set the criteria in granting or refusing the application of this kind. It is common ground that the decision whether or not to grant an extension of time is purely discretionary; however, there is always one main factor to be considered in deciding whether or not to exercise that discretion which is whether the applicant has given good or sufficient cause for such delay.

In **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.02 of 2010 (unreported), CAT, the following guidelines were formulated in considering of what amounts to good cause:-

- (a) The applicant must account for all days of the delay.*
- (b) The delay should not be inordinate.*



*(c) The applicant must show diligence, and not apathy, negligence or sloppiness in prosecuting the action that he intends to take.*

*(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."*

In the authority cited above, the principle requires the applicant in cases for extension of time, to account for every day of delay for him to be entitled for extension of time. That being the condition precedent, the issue which arises is, whether the applicant in this application, has managed to account each days he delayed?

In the affidavit sworn and filed in support of the application and the submission made by the counsel for the applicant, I find only one ground raised, that the delay to file an application for leave was due to the sickness of the applicant consequence of which he was admitted to the traditional healer.

To buttress that argument the applicant attached with his affidavit, a letter written by the street government chairman of Shamaliwa "B" one Ezekiel Mabilika Madata which introduced the applicant as the resident of his street. That letter was indorsed the following words;

*"Ni kweli Mtajwa hapo juu aliondoka tarehe 28/03/2020  
kwenda kwenye matibabu Geita ya Kienyeji alikuwa  
akisumbuliwa na Miguu- Amerudi tarehe 08/06/2020".*

The letter was literally an introduction letter, introducing the applicant that he is a resident of Shamaliwa "B" street at Igoma, that he is a good person and he be assisted what he is asking. Immediately after that content, the letter was signed by a person who introduced himself as Ezekiel Mabilika Madata, the street government chairman of Shamaliwa "B".

The endorsement was done outside the letter and the person who so endorsed neither signed nor mentioned his names on that endorsement. That taints the authenticity of the endorsement and the information contained therein. It is not known and it can not be said that the endorsement was done by the person who wrote a letter. This findings is built on the fact that if the street chairman is the one who endorsed, it cannot be explained as to why he did not include the contents of the endorsement in the main body of the letter or why he did not sign and stamp after so endorsing.

Those issues unresolved, create doubt to the authenticity of the information on the endorsement. That also makes the affidavit doubtful



and thus unreliable. It is a celebrated principle of law, that affidavit is a substitute of oral evidence, for the same to be used must pass the test of credibility and one of the important aspect is that it should be free from doubt. In this application the affidavit is doubtful, it cannot be relied upon.

That said, I find the applicant to have failed to prove that he was prevented by any reasonable cause to file the application for leave within time. The applicant has therefore failed to account the days he delayed. The period of delay is too excessive to deserve no condonation. Over and above that ground, the applicant in this application has not raised any illegality apparent on the face of the record to be termed as good cause to warrant this court to extend the time as prayed.

As the second prayer was consequential depending on results of the first, and as the first prayer fell short of accounting the delayed days as required by law, the second prayer also automatically fails. That said, the whole application is hereby dismissed with costs for lacking merits.

It is so ordered

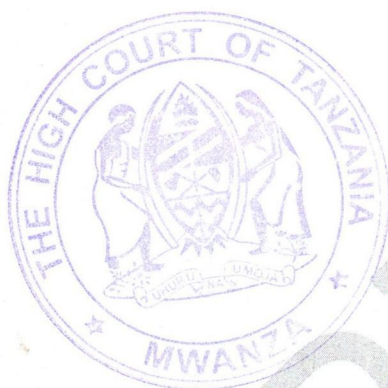
**DATED at MWANZA this 15<sup>th</sup> day of February, 2021**

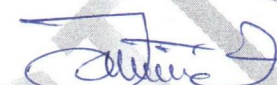
  
**J.C. Tiganga**

**Judge**

**15/02/2021**

Ruling delivered in open chambers in the presence of the parties  
on line through audio tele-conference



  
**J.C. Tiganga**

**Judge**

**15/02/2021**