

**. IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

LAND APPLICATION NO. 13 OF 2019

*(Arising from Misc. Land Application No. 01D of 2018 originating from Land Application No. 1
of 2016 of the District Land and Housing Tribunal for Ngara at Ngara)*

JOEL NATHANAEL N KINGA ----- APPLICANT

Versus

BG'S RICHARD TANZANIA LTD ----- RESPONDENT

RULING

17/02/2021 & 17/02/2021

Mtulya, J.:

This is an application for extension of time registered by Mr. Joel Nathanael Nkinga (the Applicant) to file an appeal before this court to contest the Ruling of the **District Land and Housing Tribunal for Ngara at Ngara** in **Misc. Application No. 01D of 2016**. The Applicant registered two (2) reasons for the delay; *viz*: first sickness and second, delay in engaging learned counsel to file an appeal within time. When the application was scheduled for hearing Mr. Lameck Erasto appeared for the Applicant and briefly stated that the Applicant is sick suffering from *polyneuropathy* disease which caused nerve sickness and pains in human body and was attending Temeke Municipal Council Hospital for treatment up to 28th December 2018.

With delay in instructing learned counsel to prefer an appeal before this court, Mr. Lameck submitted that they were engaged in February 2019 and therefore the Applicant has produced sufficient reasons for extension of time. To substantiate his submission Mr. Lameck cited page 6 of the typed precedent in **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 and argued that the court must consider several factors in granting extension of time including length of delay, reason for the delay and arguable case in an appeal. To his opinion, the power of this court to grant enlargement of time to file an appeal is discretionary and this court may invite the powers and decide in Applicant's favour.

This submission was protested by learned counsel for the Respondent, Mr. Prosper Mulokozi who argued that the Applicant did not account on every day of delay as depicted in page 4 of the same precedent in **Ngao Godwin Losero v. Julius Mwarabu** (supra). To his opinion the Applicant's Affidavit is silent from 28th December 2018 to 21st February 2019 which is more than sixty (60) days, and in any case the Applicant's Patients Card shows that he was an outpatient attending the hospital at the interval of two (2) months which would have been utilized in filing an appeal within time by instructing his learned counsel.

With the delay in instructing his learned advocate, Mr. Mulokozi submitted that there is no such statement in the Applicant's Affidavit and it was just stated as afterthought and in any case it was to be substantiated as in the precedent of **Zuberi Nassoro Moh'd v. Mkurugenzi Mkuu, Shirika la Bandari Zanzibar**, Civil Application No. 93/15/ of 2018. In a brief rejoinder Mr. Lameck contended that the disease which the Applicant suffers affects brains, human senses and attacks on human organs. To his opinion it is the intensity of the disease and not number of days to be accounted for.

On my part, I think this court and the Court of Appeal have already set the rules with regard to sickness and precedents are abundant [see: **Kapapa Kumpindi v. The Plant Manager, Tanzania Breweries Limited**, Civil Application No. 6 of 2010 and **Benezeth Mwebesi & Two Others v. Baraka Peter**, Misc. Civil Application No. 46 of 2019]. This court therefore, will not be detained in search of sufficient reasons when sickness is registered as a reason. However, in the present application, the Applicant did not display in his Affidavit that after the last attendance in Temeke Hospital on 28th December 2019, what steps he has taken to show seriousness in following up his appeal. According to Mr. Lameck it was impossible to make follow up considering the nature

of the disease whereas Mr. Mulokozi thinks that he was not such serious that is why he was out patient.

I think it is settled and certain that applicants for extension of time must approach this court immediately when they become aware that they are out of time. In celebrated precedent of the Court of Appeal in **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008, it was stated that:

*It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, **act very expeditiously...***

(Emphasis supplied).

In the present Application, Respondent's counsel mentions more than sixty (60) days of delay. At any standard that is a long time in bringing application for extension of time. More than sixty (60) days delay without any other good explanation than sickness may not persuade this court to decide in favour of the Applicant. If that is allowed, this court will set a bad precedent, which I am not ready to be part of it. It may not only lead to floodgate of applications of extension of time, but also invite sloppiness on part of patients. Every applicant will be asking of that opening and there would be no good standards set

in granting extension of time to applicants. In my considered opinion, applicants for extension of time who register sickness as a good cause of delay, must show steps in following up their applications after completion of their treatment.

I understand there is another cause registered in this application on failure to engage learned counsel within reasonable time. I perused the record and I have not spotted that claim. Even if it was registered, it would have been difficult for this court to gauge or establish as to when the Applicant engaged his learned counsel.

In any case, I have never encountered the reason of failure to engage an advocate to be part of the good causes so far established in our courts. In any case, if that is allowed to be one of the pigeon holes in good causes for extension of time, it will lead into chaos and every applicant for extension of time would prefer to register the reasoning in his application.

Having said so and considering precedents cited in this Ruling, I think, the Applicant has failed to persuade this court to grant leave for extension of time to file an appeal out of statutory time. Therefore, this Application is hereby dismissed with costs.

It is so ordered.


F.H. Mtulya

Judge
17.02.2021

This Ruling was delivered in Chambers under the seal of this court in presence of the Applicant, Mr. Joel Nathaniel Nkinga and his learned counsel Ms. Liberatha Bamporiki and in the presence of learned counsel Mr. Prosper Mulokozi for the Defendant.


F.H. Mtulya

Judge
17.02.2021