

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
MISC. LAND APPLICATION NO. 42 OF 2020**

MAHALIYA SHIJA.....APPLICANT

VERSUS

AGNESS MASOLWA.....RESPONDENT

(Administratrix of the estate of the late Lyaki Mhoja)

(Application from the judgement of Kahama
District Land and Housing Tribunal)

(Paulos L.S Lekamoi,Chairman)

dated the 29th day of December,2017)

in

Land Application No.135 of 2016

.....

RULING

2nd December, 2020 & 19th February, 2021

MDEMU, J.:

This is an application for extension of time filed by the Applicant on 27th day of July, 2020. It is under the provisions of Section 14 of the Law of Limitation Act, Cap.89 and Section 41(2) of the Land Disputes Courts Act, Cap.216. The Applicant prays for the following orders:-

- (a) That, the Honourable Court be pleased to
extend time within which to file an appeal.*

(b) Costs of this application be provided for.

*(c) Any other or further relief that this
Honourable court may deem fit and just to
grant.*

The application is supported by an affidavit affirmed on 16th day of July, 2020 by Mahaliya Shija, the Applicant. When the matter came for hearing on 2nd December, 2020, both the Applicant and the Respondent appeared in person.

The Applicant submitted that, he delayed to appeal within time because he was sick. He was at Tabora to the traditional medical practitioner till June 2020 when his health got stabilized. Having so submitted in respect of reasons for delay, he prayed this application be allowed.

In reply, the Respondent submitted that, it is not true that the Applicant was sick. The case was decided on 29th day of December, 2017, and as there was no appeal, execution process commenced on 26th day of July, 2019 and infact, the said land was handed over to him. He therefore prayed this application be dismissed.

In rejoinder, The Applicant added that, as the Respondent is leaving at kahama, she may not know whether the Applicant was sick or not. He

therefore insisted to this court to extend time in order to file her appeal out of time.

Having carefully gone through submissions of both parties, the Applicant's affidavit and an affidavit in reply of the Respondent, the issue to determine here is whether the Applicant has shown good and sufficient cause for the delay. As to the discretionary power of this court to extend time, the provisions of Section 41 (2) of the Land Disputes Courts Act provides as hereunder:

*"An appeal under subsection (1) may be lodged within fortyfive days after the date of the decision or order **provided that, the High Court may for the good cause, extend the time for filing an appeal either before or after the expiration of such period of fortyfive days.**"(emphasis mine)*

According to the provisions cited above, the court may, for good and sufficient cause, extend time to appeal. It is clear that, in order for the court to extend time to appeal, the Applicant must show good and sufficient cause for delay. This legal requirement has been re stated in a

number of court decisions, just a few to mention is the case of **Dismas Bunyerere v. The Republic, Criminal Application No. 42/2017** and **Salum Nhumbili v. Republic, Criminal Application No. 8 of 2014** (both unreported) where it was held that, for the court to exercise its discretion to extend time to appeal, the Applicant must satisfy to Court that there are sufficient and good cause for the delay.

Are there good and sufficient cause for delay shown by the Applicant for this court to extend time?. In the application at hand, the Applicant in his affidavit at paragraph 3 states the following as factors for delay;


3. That, on 05th day of January, 2018 she was attacked by demons and that she was taken by one Charles Masele and Maliseli Masele to Urambo-Tabora so as to see a traditional healer."

According to the records, the judgment of the District Land and Housing Tribunal was delivered on 29th day of December, 2017. This appeal ought to be lodged latest by 12th January, 2018 so as to meet the prescribed period of forty five days as provided under section 41(2) of the Land Disputes Courts Act, Cap. 216. The Applicant was late for almost 2 years and 6 months'. The reasons in the affidavit and also as submitted

by the Applicant may not be easily trusted. Grounds in the affidavit that, he was attacked by demons and taken to the traditional Medical healer at Urambo Tabora appears to be an afterthought. In my view, the Applicant failed to show sufficient and good cause for delay because there is no any substance as such indicating that the Applicant attended a clinic at the traditional medical practitioner.


In the premises, I find no merits in this application and is accordingly dismissed. Each party to bear own costs.

It is so ordered.


Gerson J. Mdemu
JUDGE
19/02/2021

DATED at **SHINYANGA** this 19th day of February, 2021.




Gerson J. Mdemu
JUDGE
19/02/2021