

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

MISC. LAND APPLICATION NO. 65 OF 2020

MARIA SHEPASHEPA APPLICANT

VERSUS

REUBEN BUDEBA RESPONDENT

RULING

14th February, & 29th March, 2021

ISMAIL, J.

In this application, indulgence of the Court is sought, for enlargement of time which will enable the applicant to institute against the decision of the District Land and Housing Tribunal for Geita at Geita. The decision sought to be impugned is in respect of Appeal No. 76 of 2019. The respondent emerged a victor in that appeal which touches on a 3 ½ - acre piece of land whose ownership is the subject of the disputants' tug of war. The application is supported by the applicant's own affidavit which sets out grounds on which her quest for extension of time is based. The justification

for her quest for the extension is illegality, as contended in the supporting affidavit.

The respondent expressed her opposition to the application, through a terse counter-affidavit in which the applicant was put to strict proof of what she averred.

Hearing of the matter pitted the disputants themselves with no legal representation. In her laconic submission, the applicant stated that her inability to prefer an appeal was due to her ailment that took her to a traditional healer. During that time, the applicant contended, she was bed ridden and unable to do anything and there was no body to act for her. It is in view thereof that she urged the court to grant an extension of time to file her appeal.

The respondent was of the view that the application was not meritorious, and that her ailment was not evidenced. He argued that the applicant ought to have informed the court that she was unable to file her application on time. He prayed that the application be dismissed.

These rival submissions bring out one singular question. This is whether the application is meritorious.

It is a well settled position that extension of time is granted where a party presents a credible case that may convince the Court to exercise its discretion and grant the application. This process also requires the applicant to act in an equitable manner. This persuasive position was propounded by the Supreme Court of Kenya in ***Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others***, Sup. Ct. Application 16 of 2014, wherein it was held as follows:

"Extension of time being a creature of equity, one can only enjoy it if [one] acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that [one] was not at fault so as to let time lapse. Extension of time is not a right of a litigant against a Court, but a discretionary power of courts which litigants have to lay a basis [for], where they seek [grant of it]."

The foregoing position was cemented in the landmark decision of ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported), in which conditions for the grant of extension were set out. These are:

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

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

(d) *If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."*

See: ***Aviation & Allied Workers Union of Kenya v. Kenya Airways Ltd, Minister for Transport, Minister for Labour & Human Resource Development, Attorney General***, Application No. 50 of 2014 (Supreme Court of Kenya).

While the applicant has cited illegality in the supporting affidavit, her oral submission dwelt on ailment as a reason for the delay. The latter version presents a story that is substantially at variance with his averments on oath i.e. the affidavit affirmed in support of the application. These two conflicting versions have left the Court to wonder as to which of the two presents a credible story. In any case, I am persuaded to go by what has been averred in the affidavit, knowing that what is deposed in the affidavit is what should be relied upon, as depositions in the affidavit are evidence, unlike submissions which are *generally meant to reflect the general features of a party's case and are elaborations or explanations on evidence already tendered*. (See: ***The Registered Trustees of Archdiocese of***

Dar es Salaam v. Chairman Bunju Village Government and Others,

CAT-Civil Application No. 147 of 2006 (unreported)).

A scrupulous review of the affidavit reveals that the sole reason for the prayer for extension of time is an illegality that has been cited in paragraph 6 of the affidavit. While it is an established position that illegality may constitute a sufficient cause for extension of time, the illegality must be apparent and one that bears sufficient importance (See: ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***). In the instant application, the illegality allegedly resides in the alleged lack of the requisite quorum for the constitution of the Ward tribunal. As the applicant levelled this allegation, nothing has been put forward to support this contention, as the proceedings of the Ward Tribunal have not been appended to the application. This means that the contention of illegality is one that is not apparent and incapable of being subjected to any semblance of verification. I take the view that the Court has not been treated to any particulars on which to take illegality as the basis for extension of time.

But even assuming that the contention of ailment was properly raised and specifically pleaded in the supporting affidavit, I take the view that the same would not save the day for the applicant. While the current legal

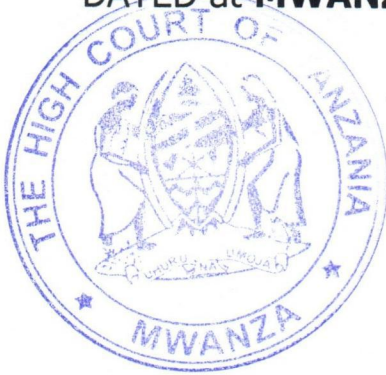
holdings are to the effect that illness constitutes a good reason for extension of time (See: ***Christina Alphonse Tomas (as Administratrix of the late Didas Kasele versus Saamoja Masinjiga***, CAT-Civil Application No. 1 of 2004 and ***Richard Mlagala & 9 Others v. Aikael Minja & 3 Others***, CAT-Civil Application No. 160 of 2015 (both unreported), such ailment must be sufficiently evidenced. In the absence of any such evidence, the contention would be lacking in veracity. It would be taken as a mere afterthought which would hardly be considered as the basis for the grant of extension. This is what this application has become. The applicant has just made a casual argument that she was taken ill and admitted to a traditional herbalist and not a shred of evidence was given to support the contention. No particulars on when she fell ill, the gravity of her illness, and the date on which she was discharged have been shared. I consider this to be an afterthought which cannot be admitted and form the basis for extension of time craved by the applicant, lest the Court is deemed to have been led away by sympathy, an abhorrent conduct which is inconsistent with the guidance given in ***Dephane Parry v. Murray Alexander Carson*** (1963) EA 546.

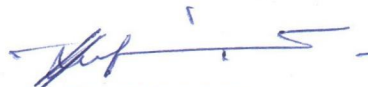


Consequently, I hold that the applicant has failed the legal threshold set for extension of time and, accordingly, I dismiss the application with costs.

It is so ordered.

DATED at **MWANZA** this 29th day of March, 2021.




M.K. ISMAIL
JUDGE

Date: 29/03/2021

Coram: Hon. G. K. Sumaye, AG-DR

Applicant: Present online. Mobile No. 0753 594602

Respondent: Absent

B/C: J. Mhina

Court:

Ruling delivered in chamber, in the virtual attendance of the applicant and in absence of the respondent this 29th day of March, 2021.

G. K. Sumaye
AG-DR

At Mwanza
29th March, 2021