

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

AT MWANZA

MISC. LAND APPLICATION NO.06 OF 2021

JOHN S. ATHANAS (*Administrator
of the Estate of Athanas Mgoya*) **APPLICANT**

VERSUS

TELLA LUPAMBA.....**RESPONDENT**

RULING

1st March, & 6th April, 2021

ISMAIL, J.

This ruling is in respect of an application for extension of time for filing a Notice of Appeal to the Court of Appeal of Tanzania. The intended appeal is against the decision of the Court (Hon. Mgeyekwa, J.) on an appeal which was instituted by the respondent. The appeal sought to reverse the decision of the District Land and Housing Tribunal in Misc. Application No. 283 of 2019, which dismissed the respondent's prayers for vacant possession of the premises on Plot No. 130 Block AA Mabatini, Mwanza. The Court partly allowed the appeal and ordered that the file be

remitted back to the trial tribunal for ascertaining the currency value from the date the appellant advanced the sum of money to the late Athanas Magoye. The applicant is bemused by this decision, and it is intended that the same be challenged by way of appeal to the Court of Appeal, hence the applicant's preference of the instant application.

The application is supported by the applicant's own affidavit in which grounds for the prayers made are deponed. Illness has been cited as a ground for the delay, and the contention made by the applicant is that subsequent to delivery of the Court's decision, the applicant fell ill, and on 30th March, 2020, he was hospitalized at Sekou Toure Regional hospital. He was discharged from hospital on 8th April, 2020 after which he attended fortnightly checkups. It was in view thereof that he failed to file the notice of appeal and an application for leave to appeal on time.

At the hearing of the application, the applicant was in attendance, while the respondent on whom service was effected, entered a non-appearance. This necessitated ordering that the matter proceeds *ex-parte*. In his laconic submission, the applicant reiterated what was stated in the affidavit. He further argued that, after he had been discharged from hospital, he started mobilizing a war chest to finance the impending appeal proceedings. He prayed that his application be granted as prayed.

The question for settlement is whether the application has met the threshold for granting an extension of time.

The well settled principle is 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. It is a process that also entails the applicant acting in an equitable manner, in line with the persuasive position enunciated 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]."

In our jurisdiction, it is the Court of Appeal's decision in ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported), that set key conditions for the grant of extension. 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."*

The reason cited for the applicant's dilatoriness is that he was taken ill and was admitted to hospital. While the trite law is 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), it is also a requirement that such ailment must be sufficiently evidenced. In the instant case, the applicant has attached a medical chit that substantiates the contention that the applicant was indisposed and hospitalized. While this attracts no qualms, a scrupulous review of the said chit reveals what the applicant has stated in the supporting affidavit. That his ailment lasted for only eight days, out of the

30 days set out for filing a notice of appeal. Nothing has been stated with respect to the days that preceded his ailment and eventual hospitalization.

In his oral submission, the applicant has stated that after his recovery from illness, he worked on mobilizing financial resources which would help him sustain his challenge against the respondent's continued stranglehold of the suit premises. Attractive as it may be, this argument did not feature in the supporting affidavit, and I find no justification for relying on this contention, knowing that I am bound to rely on no more than depositions made in the affidavit. This is in view of the fact 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)).

But even assuming that the contention in the oral submissions is sound, credible and worth of reliance, I would still hold that such reason takes care of the applicant's inaction subsequent to his recovery from illness. It does not take care of the delay of 24 days, ranging between

delivery of the Court's decision and the applicant's ailment. These are the days during which the applicant sat idle, doing nothing but twiddling his fingers. It is a delay which would be legitimately considered as characterized by apathy, negligence or slovenliness. It is a delay that has not been accounted for, contrary to the dictates of the law as enunciated in ***Bushiri Hassan v. Latina Lucia Masaya***, CAT-Civil Application No. 3 of 2007 – unreported), in which it was held as follows:

"...Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

It is my considered view that, acceding to the prayer for extension of time is, in the circumstances of this case, to deviate from the astute holding in ***KIG Bar Grocery & Restaurant Ltd v. Gabaraki & Another*** (1972) E.A. 503, in which it was held that ***"... no court will aid a man to drive from his own wrong."*** This is a trap I have chosen to avoid.

In the upshot, I hold that this application has failed to meet the legal threshold set for extension of time and, accordingly, I dismiss it. No order as to costs.

It is so ordered.

DATED at **MWANZA** this 6th day of April, 2021.

A handwritten signature in blue ink, appearing to read 'M.K. ISMAIL', with a long horizontal stroke extending to the right.

M.K. ISMAIL

JUDGE

Date: 06/04/2021

Coram: Hon. G. Sumaye, Ag-DR

Applicant: Present

Respondent:

B/C: J. Mhina

Court:

Delivered under my hand and the Seal of this Court via
teleconference with the parties today 06.04.2021.

G. K. Sumaye

AG-DR

At Mwanza

06th April, 2021