

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO. 12 OF 2020

(Arising from Misc. Land Application No. 151 of 2020. Originating from Land Application No. 45 of 2015 in the District Land and Housing Tribunal of Mtwara at Mtwara)

MAGDALENA THERESIA NGONDO.....APPELLANT

VERSUS

AVOR NGONYANI.....RESPONDENT

RULING

9 & 18 March, 2021

DYANSOBERA, J.:

Before the District Land and Housing Tribunal of Mtwara, the appellant successfully sued the respondent and one Msafiri Linje (2nd respondent at the Tribunal) in Land Application No. 45 of 2015 whereby she was declared as the rightful owner of the piece of land located at Naliendele area within Mtwara

Municipality. The respondent was condemned costs of the suit. The respondent's appeal before this court was dismissed on 20th June, 2017. The applicant, it seems, could not file her bill of costs in time. She decided to file an application before the lower Tribunal seeking extension of time within which to file the bill of costs. The application was heard ex parte after the respondent defaulted appearance and failed to file a counter affidavit despite being given seven days' time. Nonetheless, the application was dismissed for want of merit. The appellant was dissatisfied hence this appeal. Though a total of three grounds were filed, only two grounds are relevant for proper determination of this appeal and they are the following:-

1. That the trial Chairman erred in law and fact for not considering that the delay for the applicant to file her bill of costs was caused by her illness (suffering from heart disease and cancer)
2. That the trial Chairman erred in law and fact for not considering that the delay for the applicant to file her bill of costs was caused by the respondent's filing in the High Court of Tanzania at Mtwara Land Case Appeal No. 12 of 201 after he was aggrieved by the decision in Land Application No. 45 of 2015 in the District Land and Housing Tribunal at Mtwara before Hon. S. H. Wambili.

The respondent has resisted the appeal by filing a reply to the appellant's petition of appeal.

At the hearing of this appeal, both the appellant and respondent appeared in person and were unrepresented.

The parties' submissions in support and in opposition of the appeal were brief and to the point. The appellant contended that the trial Tribunal erred in refusing her to file her bill of costs while she had given sufficient cause. She explained that she was sick and tendered some documents to prove the sickness.

The respondent, on his part, stated that the appellant was late in filing the bill of costs. He argued that the bill of costs had to be filed within sixty days but instead, she filed it six years after. He asked this appeal to be dismissed.

The application before the District Land and Housing Tribunal was filed under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E.2002]. The section provides as hereunder:

"14.

"(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and

an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.”

- (2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application.

According to the above provisions, the grant of extension of time on reasonable or sufficient cause being shown by the applicant. The issue for determination, therefore, is whether the appellant had demonstrated sufficient cause for the delay. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and extension of time may, according to the above provisions, only be granted where it has been sufficiently established that the delay was with sufficient cause. But what amounts to sufficient cause? The Court of Appeal in the case of **Regional Manager, TANROADS KAGERA v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 observed:

“What constitutes “sufficient reason” cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules”

In this case, it cannot be gainsaid that an award of costs was the appellant's legal right having been adjudged by the District Land and Housing Tribunal in the said suit. The Tribunal was a court of competent jurisdiction. The award of the bill of costs to the appellant was not overturned or interfered with by this court in the respondent's appeal. It is my finding that such right, could not be denied by mere technicalities or procedural requirements the aim being to advance substantial justice. This Court (Mackanja, J as he then was) in Civil Revision No. 29 of 1997 between **NIEMCO Ltd v. MILO Construction Co. Ltd** observed: -

'Now the principle behind section 14 of the Law of Limitation Act, No. 10 of 1971, is that its application should advance substantial justice when negligence, nor laxity, nor laches, nor indolence, nor want of bona fides, is imputed on the applicant...'

Indeed, that is the gist of Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

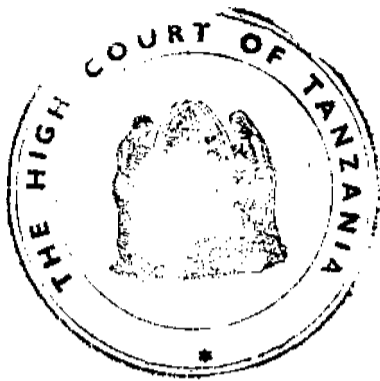
Since it has not been shown by the respondent that the applicant is guilty of any of the factors I have mentioned and taking into account that the reasons given by the appellant that she failed to file the bill of costs in time because she was not only sick but was also following up the appeal the respondent had filed before this court. These grounds were sufficiently explained by the appellant in her sworn

affidavit, paragraphs 3 and 4 in particular. This evidence was not controverted by the respondent either orally or in writing as he neither appeared in the Tribunal nor filed a counter affidavit. Since the averments in affidavit filed by the appellant were not controverted, it was wrong on part of the Tribunal to hold that the appellant had not shown sufficient cause. It would have been a different case if the respondent had either appeared in the Tribunal and contested the application or filed a counter affidavit to counter the appellant's averments.

It is my finding that the appellant sufficiently explained away her delay in filing her bill of costs. The uncontroverted facts that she was sick suffering from heart disease and agonizing with cancer, were in the circumstances of the case, sufficient reasons explaining her delay. It is true that the mere failure by the respondent to file a counter affidavit or appear before the Tribunal precluded not the Tribunal from considering whether the appellant had shown sufficient reasons for the delay, there was no dispute that the appellant was asserting her valid and obvious legal right adjudged by the same Tribunal and the reasons explaining her delay were not controverted anyhow by the respondent. The reasons advanced were sufficient for not only explaining the delay but also to justify the grant of extension of time.

The learned Tribunal Chairman wrongly dismissed the appellant's application for extension of time.

With the foregoing reasons, I allow the appeal, quash and set aside the decision of the District Land and Housing Tribunal. I step into the shoes of the Tribunal and extend the time for the appellant to file her bill of costs. She should file the same within sixty (60) days from the date of this judgment.

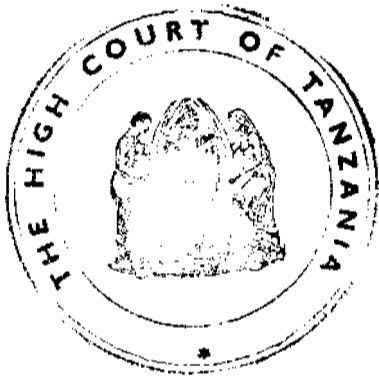



W. P. Dyansobera

Judge

18.3.2021

This judgment is delivered under my hand and the seal of this Court on this 18th day of March, 2021 in the presence of the appellant and the respondent.




W. P. Dyansobera

Judge