

**IN THE HIGH COURT OF TANZANIA
MWANZA DISTRICT REGISTRY
AT MWANZA
MISC. LAND APPLICATION NO. 94 OF 2020**

(Arising from HC. Misc. Land Application No. 188/2019, originating from Land Appeal No. 137 of 2016)

MWITA MWASI APPLICANT

VERSUS

CHACHA WAMBURA WANGWE RESPONDENT

RULING

TIGANGA, J

Under section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019], the applicant moved this court for the following orders;-

1. That this court be pleased to extend time for lodging a Notice of Appeal to the Court of Appeal of Tanzania out of time against the decision of the High Court of Tanzania, in Misc. Land Application No. 188 of 2019 delivered on 30/04/2020 by Hon. Rumanyika, J.
2. Any other relief (s) that this Hon. Court may deem fit and just to grant to the applicant.

The application was by chamber summons and supported by the affidavit sworn by Mwita Mwasi, the applicant, which not only that it pointed out the background of the matter, but also the reasons for the application.

The background of the Application is that, in 2015 through Land Case No. 32/2015, before Tarime District Land and Housing Tribunal, parties contested for ownership of the piece of land located at Kimusi village. The respondent emerged victorious in that contest. The decision of the District Land and Housing Tribunal did not please the appellant, he appealed before this court in Land Appeal No. 137/2016 before this court. The appeal was dismissed consequent of which, the appellant filed an application for leave to file an appeal to the Court of Appeal, that is Misc. Land Application No. 188/2019. However, the application was dismissed with costs for being devoid of merits. It is following this decision the appellant is now asking for leave to appeal to the Court of Appeal of Tanzania.

The reason given as to why he failed to file a notice within time is that he did fall sick of corona virus pandemic disease and was Quarantined at the Roman Catholic Centre for Treatment. Therefore the delay to file the notice within the statutory period of 14 days was not intentional or lack of diligence.

The second ground is that the decision in Misc. Land Application No. 188/2019 is tainted with illegality on account that it was improper for the

village land allocation committee to allocate the land to the respondent while the land was the applicant's clan land.

The application was countered by the respondent by filing the Counter Affidavit, that the applicant has no any reasonable ground and has not accounted for every day delayed. Further to that, the respondent said that the applicant did not at all prove his sickness by any documentary exhibits. Regarding an issue of illegality he avers that there is no illegalities in the ruling sought to be challenged before the Court of Appeal.

During the hearing of the application, the applicant adopted the content of the affidavit. He submitted that he fall sick, therefore could not communicate with his Advocate.

The respondent insisted that the allegation has no truth. He said in his submission, that he did not say when was he put to the quarantine and when was he released there from. He said that the applicant delayed because of Laziness and has failed to account all the delayed days.

He said that the respondent does not reside with him, so he cannot prove that the applicant was not sick. He asked to be given an opportunity to file the Notice of Appeal to commence the appeal process. That being a

summary of the records, application counter affidavit and the arguments advanced in support or opposition of the appeal. It is instructive to find that the law upon which this court has been moved that is section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] empowers this court to extend time giving notice of intention to Appeal.

In law the court may extend time where the applicant shows good cause for delay, in other hand he must show that there was concrete reasons which prevented him to file the Notice of Appeal within time which the applicant. The reason gave, is that immediately after the ruling in Misc. Land Application 188/2019 was delivered, the applicant fall sick and was put to the appeal. The applicant did not say when was he put to the quarantine and when was he discharged.

However, the record show that the decision in Misc. Land Application No. 188/2019, was delivered on 30/04/2020, but the application was filed on 01/10/2020. Arithmetically the delayed days are about 5 (five months). The issue is whether the applicant was in quarantine in all these three months.

In the case of **Lyamuya Construction Company Limited vs The Board of the Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2/2010 - CAT, it was held inter-alia that the following criteria's if met amounts to good cause for extension of time.

- a. The applicant must account for all days of delay,*
- b. The delay should not be inordinate,*
- c. The applicant must show diligence not apathy, negligence or sloppiness in prosecuting the action that he intends to take,*
- d. If the court feels that there are other reason, such as the existence of point of law of sufficient importance such as illegality of the decision sought to be challenged,*

In principle all these needs to be proved by the applicant. The issue remain whether the applicant accounted all days of delay? From the records, the applicant delayed to file this application for about five months which is approximately 150 days. The reason he gave is that he was quarantined following his sickness of corona virus. However he did not say when was he quarantined, and when was he released or discharged. He did not provide medical documentary evidence to prove that he was sick. That creates doubt of his sickness, failure to mention the date he was

quarantined, and the date he was discharged, means the applicant did not at all account for all days of delay.

The second issue deduced from the authority above is whether the day is not inordinate? By all standards five months delay is inordinate and intolerable especially in a situation where there is no explanation of what the applicant was doing like in this case.

The third issue is whether the applicant has shown diligence not apathy, negligence or sloppiness in prosecuting the action that he intends to take?

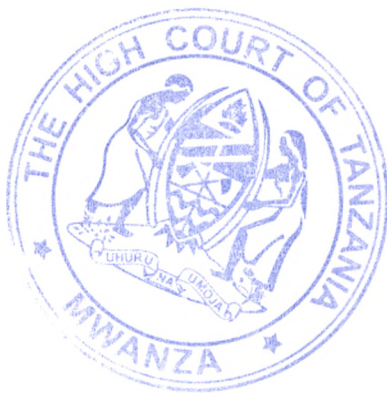
From the conduct of the applicant, there is no sign that the applicant has been serious in his dealing with this issue, lack of seriousness is exhibited by the facts that he alleged that he was sick but produced no documentary exhibit to prove his sickness. He was therefore not diligent but negligent.

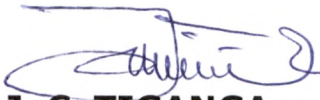
Last is the issue of illegality in the decision sought to be challenged, for an issue of illegalities to stand as good cause, such point of law must be of sufficient importance and must be apparent on the face of the record. I have passed through the Ruling of Hon. Rumanyika, J, I find no

any point of law apparent on the face of the record and which is of sufficient importance, which needs to be correct or dealt with by the Court of Appeal. All said, I find the application to be unmeritorious, it is therefore dismissed with costs.

It is so ordered.

DATED at MWANZA, this 01st day of June, 2021




J. C. TIGANGA
JUDGE
01/06/2021