

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT SONGEA**

**Miscellaneous Land Application No. 1 of 2021**

**(Originating from Land Case No. 05/of 2017 of the High Court of Tanzania  
at Songea before Judge Arufani)**

**SILVANUS NCHIMBI ..... APPLICANT**

**VERSUS**

**MR. MOHAMED KAWANGA ..... 1<sup>ST</sup> RESPONDENT**

**MKUZO ISLAMIC SEC. SCHOOL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Date of Last order: 24/06/2021**

**Date of Ruling: 01/07/202**

**BEFORE: S.C. MOSHI, J.**

The application has been preferred under section 11 (1) of the Appellate Jurisdiction Act Cap. 141 R.E 2019. The applicant is praying for the following orders:

- 1. That, this Honourable Court be pleased to extend time for the Applicant to give a notice of appeal out of time.*
- 2. Any other reliefs this Honourable Court may deem fit and just to grant.*

### *3. Costs of this Application.*

The application is supported by applicant's affidavit, on their part, the respondents opposed the application, and in response, they filed a counter affidavit. The application was disposed of by way of written submissions. The applicant was represented by Mr. Makame Sengo, advocate whereas the respondent was represented by Mr. Othman Kalulu, advocate.

The reasons for delay were deponed in applicant's affidavit as quoted in extenso hereunder:

- 1. That, I am the applicant in this Application thus I am very conversant with the facts I am to depone hereunder.*
- 2. That, there was a land case no. 05 of 2017 at the High Court of Tanzania at Songea whereby I was a plaintiff thereof and its judgment was delivered on 12/12/2019. **A copy of the judgment dated 12/12/2019 is hereby annexed as annexure SNI and a leave of this the Honourable Court is craved to form part of this affidavit.***

3. *That, I was aggrieved with the said judgment and its decree of the High Court of Tanzania at Songea before Judge Arufan, and I decided to appeal.*
4. *That, while I am preparing myself to commence appeal process, I travelled to Dodoma for family matters.*
5. *That, unfortunately before even lodging a notice of appeal while I am in Dodoma, I felt sick and I needed to seek for treatment for which I opted Dodoma Regional Referral Hospital.*
6. *That, upon medical examination it was discovered that I am suffering from Benign Prostate Hyperplasia (BPH) and I was recommended to attend clinic for assessing the recovery process. **A copy of the medical certificate dated 23/12/2019 is hereby annexed as annexure SN2 and leave of this Honourable Court is craved to form part of this affidavit.***
7. *That I was bedridden in ward 16A of the Dodoma regional referral hospital from 01/01/2020 until 10/01/2020 after going through a surgery. **A copy of the medical certificate dated 10/01/2020 hereby annexed as annexure SN3***



***and a leave of this court is craved to form part of the affidavit.***

8. *That, on 17/02/2020 I went back to hospital for a clinic to assess the recovery process from the surgery. **A copy of the medical certificate dated 17/ 02/ 2020 is hereby annexed as annexure SN4 and a leave of this Honourable Court is craved to form part of this affidavit.***
9. *That, on 01/04/2020 I went to the hospital for a clinic to assess the recovery process to wit I was examined through ultrasound. **A copy of medical certificate dated 01/04/2020 is hereby annexed as annexure SN5 and a leave of this Honourable Court is craved to form part of this affidavit.***
10. *That on 12/06/2020 I did an assessment and the results showed I was recovering well. A copy of medical certificate dated 12/06/2020 is hereby annexed as annexure SN6 and a leave of this Honourable Court is craved to form part of this affidavit.*

11. *That, few days later I started feeling abnormal as I was coughing in a very difficult way and I decided to go back to the same hospital for a check-up whereby I was examined through an X-Ray and it showed that I have problem in my chest. A copy of medical certificate dated 10/07/2020 is hereby annexed as annexure SN7 and a leave of this Honourable Court is craved to form part of this affidavit.*
12. *That, on 23/09/2020 I went back to the hospital for a clinic to assess the recovery process and I was examined through a ultrasound and I was recommended to return one more time. **A copy of medical certificate dated 23/09/2020 is hereby annexed as annexure SN8 and a leave of this Honourable Court is craved to form part of this affidavit.***
13. *That, on 25/11/2020 when I went to the hospital for a clinic as to assess if I was fully recovered, the results came out that I am recovered well and there is need to attend the clinic. **A copy of medical certificate dated 25/11/2020 is hereby annexed as annexure SN9 and leave of this***

***Honourable court is craved to form part of this affidavit.***

14. *That, I came back to Songea and I started seeking the legal advice concerning the possibility of appealing from the judgement and decree.*
15. *That, on 30/11/2020 I met with one advocate Abdallah Issa Alli for a legal consultation and told me that I am already out of time to make the appeal and the only way to appeal is first to make an application for extension of time to lodge Notice of appeal out of time. **A copy of Consultation fee receipt and affidavit affirmed by advocate Abdallah Issa Alli is hereby annexed as annexure SN10 collectively and a leave of this Honourable Tribunal is craved to form party of this affidavit.***
16. *That, I have overwhelming chances of success as the judgement and decree is irrational compared to the evidence adduced by both parties during the trial.*
17. *That, for the interest of justice all what has been sought in the chamber summons be granted unless the applicant will suffer an irreparable loss as the applicant depends on the*



*disputed land as to cultivate on it and his family too, also he used it as a source of income by renting it, thus all this will be lost if the prayers sought will be denied.*

As indicated above, the respondents opposed the application. The first respondent refuted applicant's affidavit averments in his counter affidavit. It is reproduced at full length hereinbelow; -

- 1. That I am the Respondent in this application thus conversant with the facts I am about to depone.*
- 2. That the contents of paragraphs of the Applicant's Affidavit is disputed since the whole story behind the grounds for his delay to lodge the notice of appeal in time is based on fraud.*
- 3. That the applicant has already lodged the Notice of Appeal in the registry of the High court of Tanzania at Songea.*
- 4. That the said Notice of Appeal was duly lodged and received on 10<sup>th</sup> day of January, 2020 and registered as Civil Appeal and is still pending.*

*A copy of the Notice of Appeal lodged by the Applicant is marked as is 'annexure MK-1' is annexed hereto to form part of this Application with leave of the court*

5. *That after being served with a copy of the Notice of Appeal by the Applicant I responded by lodging in the registry and serve the intended Applicant the address of my service. A copy of my address of service is marked as "annexure MK-2" is annexed hereto to form part of this application with the leave of the court.*
6. *That we ask ourselves that how can more of Notice of Appeal be received while in fact the Applicant has already lodged in the registry the Notice of Appeal long time before the said contention of the Applicant's sickness.*
7. *That the Applicant's arguments in regard with his sickness does not show the day to day sequence of the health problem which prevent him to lodge the Notice of Appeal in time.*

I have considered the applicant's affidavit, first respondent's counter affidavit, the submissions and the relevant laws. It is settled law that, the court may exercise its discretion to enlarge time limits which are prescribed by law upon sufficient reasons being shown. Therefore, the applicant is duty bound to illustrate sufficient reasons for delay, See the case of **Benedict Mumello vs. Bank of Tanzania, Civil Appeal No.**



**12 of 2002**, Court of Appeal sitting at Dar es Salaam (unreported), where it was stated that;

*"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause".*

Albeit, sufficient reasons vary depending on the circumstances of each case. However, a yard stick for court to exercise its discretion constitutes a number of factors, see the case of **Lyamuya Construction Company Ltd. Vs. Board of Registered Trustees of Young Women Christians Association of Tanzania**, Civil Appeal No. 2 Of 2010, Court of Appeal Unreported). In this case, the court enumerated some factors which may be considered, they include:

- 1. That, the applicant must account for all the period of delay*
- 2. The delay should not be inordinate*
- 3. The applicant must show diligence and, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- 4. If the court feels that there are other reasons, such as the existence of a point of sufficient importance, such as illegality of the decision sought to be challenged.*

In essence the applicant's reason for delay as advanced in the affidavit as well as in the submission is poor health, he averred that while he was preparing himself to commence appeal process, he travelled to Dodoma for family matters, unfortunately before even lodging a notice of appeal while in Dodoma he fell sick.

It is common ground that the impugned decision was delivered on 12/12/20 19 and the present application was filed on 04/02/2021. This is an inordinate delay, as the time which elapsed is a period of more than a year. In paragraph three of the affidavit the applicant stated that he was aggrieved by the decision however he decided to travel to Dodoma for family matters where he fell sick. However, he did not account for each and every date of day, for instance, he did not state the date which he travelled from Songea to Dodoma. He also did not state why he decided to travel before lodging a notice of appeal.

Again, I have scrutinized the copies of medical reports. The reports show that most of the time the applicant was an outpatient, he was not bedridden except for a period of 01/01/2020 to 10/01/2020. He has not explained what transpired during all the time that he was not attending hospital, for instance on June 12<sup>th</sup> 2020 he was doing well but he did nothing, and he did not indicate the date that he started feeling 'abnormal'



and decided to go to hospital on 10/07/2020. Again, the days from 30/11/2020 when he met a lawyer up to 04/02/2021 is not explained. It has been explained time and again that each and every day of delay must be explained.

Indeed, applicant's explanation does not add up, it apparently shows deception. This is so because the applicant did not disclose that he had once filed a notice of appeal and abandoned it instead this fact was pointed out by the respondent. The papers shows that the notice of appeal was signed on 06/01/2020 and filed in court, Songea sub registry on 10/01/2020. I agree with respondent's advocate that the whole explanation given by the applicant is based on lies. This is evidenced by the 4<sup>th</sup> and 5<sup>th</sup> paragraphs of his affidavit where he states thus:

*4. That, while I am preparing myself to commence appeal process I travelled to Dodoma for family matters.*

*5. That, unfortunately before even lodging a notice of appeal while I am in Dodoma, I fell sick and I needed to seek for treatment for which I opted Dodoma Regional Referral Hospital.*

Looking at the dates which he alleges that he was hospitalised in Dodoma, hence he failed to lodge a notice of appeal, are the same dates that the notice of appeal was prepared and lodged in court.



All in all, this shows that the applicant is not being truthful. His actions go against a cardinal maxim that he who comes to court must come with clean hands.

Evidentially, the whole scenario exhibits applicant's sheer lack of diligence; first, he has given false statements, and secondly, he has failed to account for each and every day of delay.

That said and done, I find that the applicant has failed to show sufficient cause for delay; hence the application lacks merits. Consequently, the application is dismissed in its entirety with costs.

Right of appeal is explained.



  
**S.C. MOSHI**

**JUDGE**

**01/07/2021**