

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

MISC. LAND APPEAL NO. 18 OF 2020.

(From the District Land and Housing Tribunal for Kyela, at Kyela, in Land
Application No. 28 of 2020).

JASSON MWAMBOLA.....APPELLANT

VERSUS

AHOBOKILE MWANSASU.....RESPONDENT


JUDGMENT

14/4 & 12/07/2021.

UTAMWA, J:

The appellant in this appeal, JASSON MWAMBOLA challenged the ruling dated 3rd August, 2020 (henceforth the impugned ruling) made by the District Land and Housing Tribunal for Kyela, at Kyela (the DLHT) in Land Application No. 28 of 2020. In that application which was lodged before the DLHT on the 13th May, 2020, the appellant had moved the DLHT for an extension of time within which to apply for setting aside a dismissal order. The dismissal order had been made by the same DLHT on the 24th March, 2020 in the Application No. 6 of 2019. The dismissal order followed the fact that the appellant had failed to prosecute his application (No. 6 of 2019) before the DLHT. The said failure to prosecute was exemplified by the appellant's failure to file his written submissions within the time set by the DLHT.

According to the impugned ruling, the DLHT dismissed the appellant's application for the extension of time for want of sufficient reasons. Aggrieved by the impugned ruling, the appellant appealed to this court



through the present appeal. The respondent in this appeal is AHOBOKILE MWANSASU who also stood as the respondent in the Applications No. 28 of 2020.

In his petition of appeal before this court, the appellant preferred the following three grounds of appeal:

1. That, the Chairman of the trial tribunal erred in law and fact due to failure to analyse Applicant's evidence adduced before the trial tribunal.
2. That, the Chairman of the trial tribunal erred in law and fact by dismissing the application for extension of time with regard to the fact that the appellant adduced a good cause for his delay.
3. That, the Chairman of the trial tribunal erred in law and fact by denying application for extension of time for the ground that the appellant was not hospitalized despite the fact that the appellant proved his sickness before the trial tribunal.

Owing to these grounds, the appellant urged this court to allow the appeal. He further urged it to quash, nullify and set aside the entire decision of the DLHT. He further pressed this court to grant him any other order it will deem just and fit to grant.

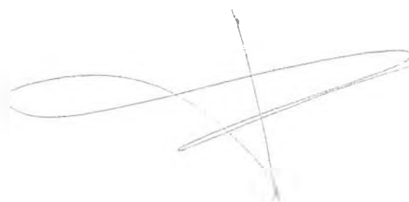
The respondent objected the appeal. The same was argued by way of written submissions. Both parties conducted their respective cases without any legal representation.

In his written submissions in chief supporting the appeal at hand, the appellant argued the three grounds collectively thus: the reasons he had

Masangwa and another, Civil Application No. 6 of 2001 to cement his argument.

The respondent further argued that, since the appellant was not hospitalized, he could still act promptly and timely, but he did not do so. He supported this point by citing the case of **Juma Mtungirehe v. Tanganyika National Parks t/a Tanzania National Parks, Misc. Civil Application No. 299 of 2014, HCT** (unreported). In that case, he contended, it was held that, the fact that the applicant was not hospitalized, showed that he could still act timely.

The respondent further argued that, before the DLHT the appellant had shown that he attended medical treatment on 18th April, 2020 to 7th May, 2020 according to the presented medical sheets. However, the dismissal order was made on the 24th March, 2020. He did not thus, account for every date of delay as required by the law. He supported this stance of the law by citing the cases of **Wembele Mtumwa Shahame v. Mohamed Hamis Civil Reference No. 8 of 2016, CAT at Dar es Salaam** (unreported), **Praygod Mbaga v. The Government of Kenya, Criminal Investigation Department and the Hon. Attorney General of Tanzania, Civil Reference No. 4 of 2019, CAT at Dar es Salaam** (unreported), **Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007, CAT** (unreported) and **Al-Imran Investment Ltd v. Print Park Park Tanzania Ltd and another, Misc. Civil Cause No. 128 iof 1997, CAT** (unreported). He added that, in the case at hand the appellant did not prove that the sickness covered all the time of the delay.



I have considered the grounds of appeal, the record, the submissions by the parties and the law. In my settled views, though the appellant preferred three grounds of appeal, they can smoothly be condensed to single ground of appeal. This is the reason why the appellant himself opted to argue all the three grounds of appeal cumulatively. The single ground of appeal is therefore, this: that, the DLHT erred in law and facts in dismissing the appellant's application for extension of time. The major issue for determination before me is thus, whether or not the DLHT in fact, erred in dismissing the application for extension of time.

In answering the major issue posed above, I will firstly discuss the impugned ruling of the DLHT. In fact, as hinted above, the applicant's main reason for the delay to file the written submissions before the DLHT was that, he fall sick on the material days. He attended medical treatments on 18th April, 2020 and 7th May, 2020 according to the presented two medical sheets. The DLHT however, found that, the two medical sheets did not show that the appellant was hospitalized, but he was a mere outpatient. He was not thus, diligent enough since he could still file the written submissions timely. The DLHT cited the **Juma Mtungirehe case** (supra) to support its finding. Furthermore, the DLHT found that, for the above reason, the appellant failed to account for each date of the delay as required by law which was underlined in the **Bushiri case** (supra) and the **Al-Imran case** (supra).

In my view, the finding made by the DLHT was well grounded for the following reasons: in the first place, it is trite law that for a court to grant extension of time, the applicant must adduce sufficient reasons for the

delay. The extension is indeed, granted at the discretion of the court being exercised judiciously. The sub-issue here is thus, whether or not the appellant adduced sufficient reasons for his delay before the DLHT. His sole reason for the application was the sickness which he wanted to support by the two medical chits mentioned above. Nonetheless, both medical chits did not indicate that the appellant was admitted in hospital as correctly found by the DLHT. In fact, this fact is not disputed by the parties.

Again, the two medical documents do not indicate that the appellant deserved a bed rest or an excuse from any duty or activity. In my view, not every sickness can constitute a justification for violating the law on limitations or for floating the time limit set by court orders. It is common ground that, illness is a common phenomenon to human life. But, not every disease or illness incapacitates a human being to perform any duty or activity. It follows thus, that, the two medical chits at issue only showed that the appellant was sick, but did not prove that his sickness made him unable to comply with the court order in filing the written submissions timely. This court is entitled to presume this fact under section 122 of the Evidence Act, Cap. 6 R.E 2019. These provisions provide that, a court may infer the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

It follows further that, the appellant's allegations in his written submissions in chief supporting the appeal at hand that, he was incapable

of performing any activity due to the sickness and he suffers old-age diseases and complications were afterthoughts. These particular allegations were supported neither by the medical chits nor by the appellant's affidavit that supported his application before the DLHT. I therefore, find that, the DLHT rightly held that the appellant failed to account for each day of the delay at issue as required by the law which is supported by the above listed precedents cited by the DLHT in its impugned ruling and by the respondent in this appeal.

Besides, according to the record (for the Application No. 6 of 2019 mentioned above) the appellant had been ordered to file the written submissions by the 23rd January, 2020 (in that application). However, according to the two medical sheets, he attended the medical treatment on 18th April, 2020 and 7th May, 2020. By simple arithmetic therefore, the alleged sickness attacked him about three months after he had failed to comply with the court order in filing the written submissions regarding the said Application No. 6 of 2019. It follows thus, that, even if it is presumed (without deciding), that the sickness in fact, incapacitated the appellant to perform any activity, the same could not be helpful to him. This is because, the sickness was irrelevant to the delay at issue. It is more so because, in his affidavit supporting the Application No. 28 of 2020 (which resulted to the impugned ruling subject of the present appeal), the appellant categorically stated at paragraph 4 of his affidavit supporting the application that, the illness had attacked him on the same 18th April, 2020 when he attended the medical treatment at the first time. In my concerted opinion, it could have been a different case had the sickness attacked him

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on or before the date when he had to file the written submissions (i.e on the 23rd January, 2020).

Owing to the above reasons, I answer the sub-issue posed above negatively that, the appellant did not adduce any sufficient reason for his delay. The major issue is also, consequently answered negatively that, the DLHT did not err in dismissing the application for extension of time.

Having observed as above, I find that the single ground of appeal mentioned above lacks merits. I accordingly overrule it and dismiss the entire appeal. The appellant shall pay the costs since it is the law that: costs are awarded at the discretion of the court and they follow event, unless there are good reasons for deciding otherwise; see section 30 of the Civil Procedure Code, Cap. 33 R. E 2019 as construed by the CAT in the case of **Njoro Furniture Mart Ltd v. Tanzania Electric Supply Co. Ltd (1995) TLR. 205**. Nevertheless, in the matter at hand, I did not see any good reason for my departure from the general rule on costs just highlighted above. It is so ordered.



JHK. UTAMWA

JUDGE

08/07/2021.

Date: 12.07.2021

Coram: Hon. P.R. Kahyoza – DR.

Appellant: Present

Respondent: Present

B/C: Patrick Nundwe.

Court: Judgement delivered in the presence of parties.



P.R. Kahyoza
Deputy Registrar

12/07/2021