

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 71 OF 2021

(Arising from a decision of the High Court of Tanzania at Mwanza in Land Appeal No. 55 of 2020 by Hon. Mashauri, J. dated 26/05/2021)

SUNGULILE KANYALALAAPPLICANT

versus

SALAMA MUGASA..... RESPONDENT

RULING

20th & 30th August, 2021

RUMANYIKA, J:.

Supported by affidavit of Sungulile Kayalala (the applicant), the application is for extension of time within which one to file an application for leave to appeal against judgment and decree of this court (Mashauri, J) date 26/5/2021. It is brought under S. 11(1) of the Appellate Jurisdiction Act Cap. 141 RE. 2019. He had service of Joseph Mange learned counsel. Mr. Constantine Ramadhan learned counsel appeared for Salama Mugasa (the respondent).

When, by way of audio teleconference through mobile numbers 0756370692 and 0767709523 respectively the matter was called on, I heard them on 20/08/2021.

Having adopted contents of the supporting affidavit, Mr. Joseph Mange learned counsel submitted that the reason for delay was that the applicant had fallen sick and for that reason hospitalized at Nyamagana (D) Hospital as outpatient, yet his condition remained worse until as late as 22/07/2021 (copy of the doctor's letter – Annexure "SU1") that once it was established and proved, sickness alone it constituted a sufficient ground for extension of time (cases of **Aziz Mohamedi v. R**, Criminal Application No. 84 of 2016 (CA) unreported and **Christina Alphonce Thomas** (Admin. of the estate of the late Didas Kasele) **v. Saa moja Matingija**, Civil Application No. 1 of 2014 (CA) at Mbeya (unreported). That by filing the notice of appeal and the present application separately the applicant's lawyer was to blame.

In reply, Mr. Costantine Ramadhan learned counsel submitted that the application lacked merits. That once it was proved sickness it sufficiently constituted a ground for extension of time yes, but in the instant application it was but after thought because the letter of


22/07/2021 it did not show when actually the applicant fell sick but also it wasn't such a medical chit either more worse one could not have filed a notice of appeal just on the deadline 4/6/2021 if at all the applicant was seriously bed ridden whereas all the time he had legal service of Matiko & Associate Advocates who would have, if at all on such behalf, but within time applied for leave (the case cited was distinguishable) that whether or not the applicant was a layman also that one constituted no sufficient ground (case of **Ngao Godwin Ngosero v. Julius Mwarabu**, Civil Application No. 10 of 2021 (CA) at Arusha) unreported that if anything, illegality needed not be simply alleged but it should be apparent and on the face of the records which was not the case here. That is all.

The central issue and it is trite law is whether the applicant had shown good cause/sufficient ground for extension of time. The answer is no. The applicant may have had fallen sick, and for that reason until as late as 22/7/2021 he may have had remained being attended at Nyamagana district hospital yes, but as it was rightly so in my view argued by Mr. Costantine Ramadhan learned counsel, more so with the view to giving account to each day of the delay, the supporting affidavit did not establish, among others when exactly the applicant fell sick. The ground

was but respectfully an afterthought much as I would agree with the learned counsel that once it was established and proved, alone illness constituted an sufficient ground for extension of time but annexure SU1 to the affidavit it was worth the name not a medical chit either (the cases of **Azizi Mohamed** (supra) and **Christina Alphonse Thomas** (supra) were respectfully distinguishable.

The application lacks merits. It is dismissed with costs. It is so ordered.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
30/08/2021

The ruling delivered under my hand and seal of the court in chambers this 30/08/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
30/08/2021