

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

**MISC LAND APPLICATION NO. 26 OF 2020**

*(Arising from Land Appeal case No. 78 of 2014 before Shinyanga Land and Housing tribunal)*

**JEREMIAH N. LUBASHA .....APPLICANT**

**VERSUS**

**SULTAN MOHAMED SULTAN.....RESPONDENT**

**RULING**

*28/6/2021 & 6/8/2021*

**MKWIZU, J;**

This is a ruling in relation to an application for extension of time within which to institute an appeal to this Court from the decision of the DLHT for Shinyanga dated 21<sup>st</sup> July, 2015 in Land appeal No. 78 of 2014. The application, made under the proviso to section 38 (1) of the Courts Act Cap 216 R.E 2019 is supported by an affidavit deposed to by the applicant.

Briefly, facts gathered from the affidavit and judgments are that, at Mhungula Ward Tribunal, applicant filed a suit against the respondent for declaration that he is a lawful owner of Plot No. 53 situated at

Bukondamayo within Kahama town. Applicant lost the case. His first appeal to this court, was struck out on technical ground hence this application for extension of time.

On 28/6/2021, when the matter came for hearing, the applicant appeared in person unrepresented while the respondent had the services of Mr. Frank Samwel learned advocate. Applicant's submissions were short but focused. He urged the court to allow his application so that he can appeal out of time.

On the other hand, Mr. Frank opposed the application on the reason that no cogent reason for the delay were exhibited. He said, this application was brought after the dismissal of Appeal No. 9 of 2019 on 14/1/2020 for being time barred, the applicant took no steps from that day to 20/5/2020 and the applicant did not account for delay.

Mr. Frank submitted further that, in paragraph 6 of his affidavit, applicant deposed sickness as one of the reasons for the delay but no evidence was adduced to establish that fact. He cited the case of **Steven B. K Mhauka Vs The District Executive Director Morogoro District Council & 2**

**Others**, Civil Application No. 68 of 2019contending that,no illegality was averred in the applicant's affidavit and therefore he was required to account for each day of the delay. He thus prayed for dismissal of the application with costs.

In additional, Respondent's counsel submitted that after all the applicant was supposed to appeal against the dismissal order by Mbuya PRM with extended jurisdiction he ought not to come to this court for extension of time.

In rejoinder, the applicant reiterated that he was all along vigilant in pursuing hisrights. He did not know if he was supposed to file an application for extension of time.

Having examined the records, the applicant's affidavit and the parties' submissions,the issue to determine is whether the application has merit.

It should be stated from the outset here that, the decision by Mbuya PRM with Extended jurisdiction in Land Appeal No. 9 of 2019 was based on the non-compliance of the provisions of section 38 (2) of the Land Dispute

Court Act Cap 216. Last paragraph of page 5 and 6 of the said ruling reads I quote: -

*"In the light of the above the word Shall used at section 38 (2) (Supra) creates a function, a duty or an obligation which must be performed by a party wishing to appeal from the District Land and Housing Tribunal to the High Court of Tanzania Land Division.*

*Failure to adhere to the above imperative legal direction renders the appeal at hand incurable defective and untenable for been improperly before this court.*

*The preliminary objection by the counsel of the respondent is hereby sustained and this appeal is therefore **hereby struck out** with costs forthwith and accordingly"*

It is not true therefore as stated by the counsel for the respondent that applicant's appeal was dismissed for being time barred. As indicated above, the striking out was because the petition of appeal was filed directly in this court instead of being lodged at the trial court. It is a settled principle of the law that a striking out order allows applicant to file fresh appeal, of course



subject to the laws of limitation. See for instance the decision of this court in Emmanuel **Eliazary Vs. Ezironk K. Nyabakari**, Land Appeal No 56 of 2018 HC (Unreported)

Reverting back to the main reasons for the delay. It is evident from the records that in the instant case, the decision, subjectmatter of the intended appeal was handed down on 21<sup>st</sup> July, 2015. The applicant manifested his intention to appeal against that decision by filing Misc. Land Appeal No. 2 of 2015 which was struck out on 3/5/2016 followed by Land Appeal no 9 of 2019 after he had obtained extension of time. It is also on the records that Land Appeal No. 9 of 2019 was struck out on 01/04/2020 and the application was filed on 22/5/2020. As explained herein above, the intended appeal emanated from the decision of the DLHT on its appellate jurisdiction. An appeal of such a nature is regulated by the provisions of section **38 (1) of the Land disputes courts Act Cap 216** which states:

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*38.-(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the **exercise of its appellate or revisional jurisdiction**, may **within sixty days** after the date of the decision or order, appeal to the High Court"*

It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application: see, for example, the unreported decisions of the Court in **Bushin Hassan v. Latifa Mashayo**, Civil Application No. 2 of 2007. It is not in dispute that the period between the delivery of decision by the DLHT to 1/4/2020 is a technical delay which cannot be blamed on the applicant. There are plethora of authorities on that position such as, **Ally Ramadhani Kihoyo v. The Commissioner for Customs and the Commissioner General Tanzania Revenue Authority**, Civil Application No. 29/01 of 2018 (unreported), **William Shija v. Fortunatus Masha** [1997] TLR 213. To mention just a few.

The actual delay in this matter is the period between 1/4/2020 when Land Appeal No. 9 of 2019 was dismissed to 22/5/2020 when the applicant filed the present application before the court. In accounting for this period, applicant affidavit particularly paragraph 6 associates the delay with his old age, ignorant of the law and legal procedures, poverty and sickness. The paragraph reads:

*"That the applicant could not appeal on time because of challenges of the applicant's old age (the applicant is 81 years old), being layperson in law and legal procedures, poverty and applicant have been sick since delivery of the judgement in Land Appeal No, 9 of 2019, possibly due to the applicant's old age"*


Just to comment a little bit on the applicant's averment in paragraph 6 above, firstly, the issues of illness is without proof. No evidence was provided to prove that applicant was sick after the striking out of by Mbuya PRM with extended jurisdiction. Secondly, the plea on ignorance of the law, and poverty has never been a sufficient ground for extension of time. See for instance a decision in **Ali Vuai Ali v.Suwedi Mzee Suwedi**, Civil Application No. 1 of 2006.

Generally, the supporting affidavit lacks explanation why it took the applicant 52 days from 1/4/2020 to 22/5/2020 to file this application. The 52 days delay is not reasonable period worth disregarding. In **Ludger Benard Nyoni V National Housing Corporation**, Civil Application No. 372/01 of 2018 (Unreported) Court of appeal observed:

*"Condonation is not to be had merely for the asking; a **full detailed and accurate account of causes of the delay and its effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility**" (Emphasis added).*

In this application the delay period is not accounted for. This application is therefore without merit. It is hereby dismissed. No order as to costs. It is so ordered.

**DATED at SHINYANGA this 6<sup>th</sup> day of August, 2021.**

  
**E.Y. MKWIZU**  
**JUDGE**  
**6/8/2021**

