

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPEAL NO. 47 OF 2021**

*(Arising from ruling of Land Application No.2 of 2021 in District Land and Housing  
Tribunal for Tarime at Tarime and originating from Land Application No. 17 of 2017  
at Kisumwa Ward Tribunal in Rorya District)*

**PASKARIA STEVEN KAKOROJA..... APPLICANT**

***VERSUS***

**NYANSWE MWITA TAMBARA..... RESPONDENT**

**JUDGMENT**

8<sup>th</sup> September and 29<sup>th</sup> September 2021

**F.H.MAHIMBALI, J**

This appeal originates from the decision of Kisumwa Ward Tribunal in land case no. 12 of 2017 that was instituted by the respondent against the appellant. The respondent alleged that the appellant trespassed into his piece of land by uprooting sisal plantation that were used as boundary. He decided to report the matter to the local leaders about their dispute and "kamati ya serikali" decided to call both parties and they set new boundaries and the appellant kept uprooting the sisal plants. On one of the visits to the locus in quo the local leaders decided to plant 13 sisal plants (mikonge) as boundary to demarcate the piece of land. This demarcation did not please the appellant, they went back to

the locus in quo and new boundaries were set. On plot A they planted 10 (mikonge) and on plot B they planted 5 (mikonge), this was the decision of Nyanchabakenye village tribunal. The respondent then planted 205 more sisal plants but the appellant uprooted them. He decided to seek legal remedies.

On the other hand, the appellant alleged that she was given the land by '*kamati ya uchumi mipango na fedha ya Kijiji cha Nyanchabakenye*' in the year 2006 and she is not responsible for uprooting the sisal plants as it is the respondent who uprooted the sisal plants. She then reported the matter to the local leaders.

The ward tribunal having heard the parties decided in favour of the respondent. This decision did not amuse the appellant. He wanted to appeal to the District Land and Housing Tribunal for Tarime at Tarime but she was out of time. Therefore, she filed an application for extension of time to file an appeal before the DLHT. The appellant in her affidavit before the DLHT deposed that the cause for her delay to appeal is that she was suffering from various illnesses. The DLHT heard the parties and eventually dismissed the application with costs as the appellant had not shown sufficient cause and failed to account for each day of delay.

The decision of DLHT irked the appellant and hence she has come to this court with four grounds of appeal contained in her petition of

appeal. The grounds of appeal are as follows in verbatim herein under;

- 1. That, the trial tribunal erred in law and facts for failure to note that, the appellant was serious sick suffering from Appendix and other diseases she got referral to Tarime District Hospital in January, 2018 soon after judgment was delivered*
- 2. That, the trial tribunal erred in law and facts for failure to determine that the appellant counted days of delay which was 80 days that she was serious sick and he started to get treatment soon after judgment was delivered in ward tribunal on 21/11/2017 up to 31<sup>st</sup> December 2020 when she got well and filed application for extension of time.*
- 3. That, the trial tribunal erred in law and facts for failure to determine that, the applicant was sick which is sufficient ground for extension of time to lodge appeal out of time.*
- 4. That, the trial tribunal erred in law and facts as for failure to notice irregularities in land application No. 17 /2017 which is a sufficient ground for extension of time.*

When this matter came up for hearing, both the applicant and the respondent were present in person and unrepresented and the appeal was heard by way of audio teleconference.

Submitting in support of the appeal, the appellant prayed that her grounds of appeal be adopted to form part of her submission. She stated that she was sick just after the delivery of the ward tribunal's judgment. The ward tribunal's decision was read on 21/12/2017 and given the copy of the judgment on 16/10/2018 which was dated

14/11/2017. She said she is perplexed as the date of delivery of the judgment and the date in the judgment are in conflict. She prayed that this appeal be allowed with costs as she fell sick and that is why she could not appeal on time.

Objecting the appeal, the respondent prayed that his reply to the grounds of appeal be allowed. He went further to submit that the appeal should not be allowed as the appellant has not accounted for each day of delay.

Rejoining the appellant reiterated her earlier submission that this appeal be allowed so that the substantial appeal is filed. She stated that she fell sick from 16/1/2018 up to 11/2/2018 at Tarime District Hospital. Then from February 2018 to 6/5/2018 at NEK Arusha Hospital. She then went to Bugando Hospital and later referred to MOI from Feb 2020 to August, 2021. She prayed that this appeal be allowed.

Having heard the parties' rival submissions and scrutinized to the court's records, the matter for contention before this court is whether this appeal is meritorious. The appellant's grounds of appeal center on the complainant that the DLHT failed to consider her sickness as a ground to grant her extension of time to appeal out of time.

The law is settled that extension of time is not an absolute right but it is based on the court's discretion.

In the case at hand the appellant claims she was sick immediately after the judgment of the trial tribunal was delivered. The law is settled that sickness is a sufficient cause beyond human control (See **Emanuel R. Maira vs The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported) where it was held that:

*"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike."*

It is also trite law that a person alleging existence of certain fact is duty bound to prove that fact exists. Sickness is proved by medical evidence and the appellant has to show how the sickness barred her from appealing in time. This is per the case of **Pastory J. Bunonga v Pius Tofiri**, Miscellaneous Land Application No. 12 of 2019 (unreported), where my learned brother Rumanyika, J. held:

*"Where it was on the balance of probabilities proved, sickness has been good and sufficient ground for extension of time yes. But with all fairness the fact cannot be founded on mere allegations. There always must be proof by the applicant that he fell sick and for the reason of sickness he was reasonably prevented from taking the necessary step within the prescribed time."*

In the instant case, I have gone through the court's record there is

a report from NSK that dated 6/5/2018 and another report from Tarime Town Council which shows she was admitted on 16/01/2018 and discharged on 11/2/2018. This means that she was admitted for approximately 25 days. In her submission she stated that she had also attended MOI and Bugando Hospitals but the medical evidence to prove sickness is wanting.

The appellant is also supposed to account for each day of delay and in the case at hand are 80 days. She stated she was sick but there is no proof providing for that assertion. To warrant extension of time, there must be an accounting of all the delayed days. As regards the issue of illegality raised, the same is barren and unsupported. It has not been established the existence of the said illegality as per law. It is a mere lamentation. In that regard this appeal is devoid of merits and is dismissed with costs.

DATED at MUSOMA this 29<sup>th</sup> day of September, 2021.



F. H. Mahimbali

JUDGE

29/09/2021

**Court:** Judgment delivered this 29<sup>th</sup> day of September, 2021 in the presence of the appellant and the respondent. B/C Miss Neema P. Likuga – RMA



F. H. Mahimbali

JUDGE

29/09/2021