

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA – SUB REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO. 33 OF 2021

(Arising from Misc. Application No. 422 of 2018 of the District Land and Housing Tribunal for Mara at Musoma, Originating from Land Application No. 188 of 2016 of District Land and Housing Tribunal for Mara at Musoma)

DEVOTHA KISIKA..... APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF

THE DIOCESE OF MUSOMA RESPONDENT

RULING

16th September & 30th Sept, 2021

F. H. MAHIMBALI, J

The applicant Devotha Kisika is dissatisfied with the decision of the trial tribunal in Land Application No 422 of 2018 delivered on 5th June 2020. She has desired to appeal against that decision, however is out of time.

By way of chamber application made under section 41 (2) of LDCA supported with her affidavit has lodged this application praying for extension of time to appeal against that decision of the DLHT.

As to why her application be granted, the applicant submits in her affidavit as follows:

5. *That on 3/8/2020, the Respondent filed application for bill of costs no.269 of 2020 the same was delivered on 14/12/2020. The applicant was busy entertaining the said matter. The applicant felt sick suffering from left family (sic) clan had to organize for treatment, and on 16/12/2020 family members managed to refer the applicant at Butiama Hospital where she undergone (sic) large operation of breast she was admitted there till 28/12/2020 when she was discharged.*
6. *That on 28/12/2020 when the applicant was discharged, she went on dressing the wound (of operated breast) for three weeks as from 29/12/2020 to 18/1/2021.*
7. *That, from 19/1/2021 travelled to Musoma for legal aid and follow up of my case 422 of 2018 for appeal. I met a lawyer who wanted to see all documents and judgments in relation with case no 188 of 2016, 422/2018 and 422/2020. The lawyer worked with my documents and he informed me to go to his office after one week. On 27/1/2021 the lawyer handed drafted documents and I filed*

the case at High Court at Musoma it was registered as Revision no 1 of 2021.

- 8. That Revision No. 1 of 2021 was heard and the judgment was delivered on 4/5/2021 by being struck out that the application for being time barred for two years as my lawyer applied revision on the case No 188 of 2016 and not appealing form (sic) the case 422 of 2018.*
- 9. That on 4/5/2021 the applicants' aunt namely Wakuru Mweya was serious sick. I had to take her to Butuguri Hospital and care for her, for 24 days as from 4/5/2021 to 28/5/2021.*
- 10. That on 28th May 2021 I had travelled to Musoma for legal assistance. I met advocate from Mligo and company Advocates, Advocate Ostack Mligo who advised me to seek leave for extension to time as 45 days for appeal had expired.*

With these reasons in her affidavit, the Applicant prays for her application to be allowed with costs.

On the other hand, Rev. Fr. Aristaric Bahati learned counsel for Respondent opposed the application and submitted materially that the decision in application No. 188 of 2016 which was heard *exparte* was decided on 27th September 2018 and not 8th February, 2018 as submitted.

As the decision in Misc. Application No. 422 of 2018 was issued on 5th June, 2020, the 45 days to appeal to High Court expired on 20th July 2020 and not 4th August, 2020 as propagated, submitted learned counsel Rev. Fr Aristarick Bahati. As to why the applicant failed to appeal between 5th June, 2020 and 20th July, 2020, there are no good reasons advanced for that. The averment that the Respondent filed bill of costs no 269 of 2020 is legally not a bar for her to file an appeal if aggrieved by the said former decision, argued the learned counsel. He added that, had she needed to appeal, she was not legally prevented from appealing against that decision by a mere filing of a bill of costs application by the other party.

That reading the affidavit of the applicant keenly, it is clear that from 21/07/2020 to 12/12/2020 between which time the filing of an appeal expired, prior to her falling sick on 13th December, 2020, there is nothing accounted by the applicant as what she was doing.

The learned counsel invited this court to be inspired by the decision in **Tanzania Fish Processors Ltd Vs Eusto Mtagalinda** – Civil Appeal No. 41/08 of 2018 (CAT- Mwanza) in which it was ruled that accounting of each day of delay is a must and that even a single day must be accounted for otherwise there would be no necessity of setting time limit for performing certain duties.

Digesting paragraph 7 of the Applicant's affidavit, the learned counsel submitted that the applicant spent a lot of time dealing with frivolous applications such as Land Revision No 1 of 2021 against the decision in Land Application No 188 of 2016 instead of dealing with the controversial issue in Land Application No. 422 of 2018. While making reference to the case of **Ngao Godwin Losero v/s Julius Mwaraba**, Civil Application No 10 of 2015, (CAT - Arusha), the learned counsel submitted that failure of not knowing the appropriate legal procedure in dealing with one's case, is not a legal excuse. Ignorance of the law has never been a good defence for grant of extension of time.

He concluded by submitting that the applicant having failed to advance sufficient legal cause for the grant of her application, the application be dismissed with costs (**see Joseph Chere vs Eliakunda Daudi**, High Court Dar es Salaam (unreported), Misc. Land Application No. 236 of 2019).

The vital issue here is whether this application is meritorious to grant. Gathering from the Court's records it is true that, the applicant through Land Revision No. 1 of 2021 had once attempted to revise the DLHT's Ruling in Application No. 188 of 2016. Her attempt was fruitless after the same had been barred by limitation of time (Hon. Kisanya, J).

I am persuaded by the submission of the Respondent's learned counsel Rev. Fr. Aristaric Bahati, that reading the affidavit of the Applicant, she is legally not advancing any good and sufficient cause for this court to grant her application.

In essence, she is just pleading apathy and exhibiting negligence on her part. I agree with Rev. Fr. Aristaric Bahati, learned counsel that the applicant has failed to account for days from 21st July, 2020 to 12th December, 2020 before she fell sick. She has further not stated why she failed to file her appeal timely (i.e between 5th June, 2020 to 20th July 2020). This being a court of law, adherence to it is a matter of strict compliance. Issues of ignorance of the law, negligence and apathy have no legal venue for entertainment. In the case of **Hamimu Hamisi Totoro @ Zungu Pablo and 2 others vs The Republic**, Criminal Application No. 121 of 128 at page 5 and 6 where it held;

*"The issue here is whether ignorance of the law constitutes a good cause for extension of time. There is a plethora of authorities to the effect that ignorance of law has never been a good cause for granting extension of time. For instance , in the case of **Hadija Adama v. Godbless Tumba**, Criminal Application No. 14 of 2013 (unreported) the court stated as*

*follows: " As regards the applicant's ignorance of law and its attendant rule of procedure , I wish to briefly observe that such ignorance has never been accepted as a sufficient reason (see for instance , **Charles Machota Salugi v. Republic**, Criminal Application No. 3 of 2011 (unreported)*

*Similar observation was made in the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) in which the court stated that:*

*"As has been held times out of number, Ignorance of the law has never featured as a good cause for extension of time (see , for instance , the unreported **ARS. Criminal Application No.4 of 2011 Bariki Israel vs The Republic** ; and **MZA, Criminal Application No.3 OF 2011 – Charles Salugi vs The Republic**). To say the least a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/ she will have nothing to offer as an excuse for sloppiness"*

That said, the application is unmeritorious in the eyes of the law. The same is hereby dismissed for want of merit. Considering the

financial position of the Applicant, I hesitate to grant costs to the Respondent as it will serve no any legal value.

DATED at MUSOMA this 30th day of September, 2021.



F. H. Mahimbali

JUDGE

30/09/2021

Court: Ruling delivered the 30th day of September, 2021 in the presence of Applicant, Mr. Aristaric Bahati, advocate for the Respondent and Miss Neema P. Likuga – RMA.

F. H. Mahimbali

JUDGE

30/09/2021