

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT ARUSHA

MISC. LAND APPLICATION NO. 89 OF 2020

(C/f the District Land and Housing Tribunal for Arusha in Application No. 28 of 2013)

MOSES LUKA APPLICANT

Versus

HABIB JUMANNE RESPONDENT

RULING

12th August & 22nd October, 2021

Masara, J.

This Application is made under the provisions of section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] whereby the Applicant is moving the Court to extend time within which he may file his appeal to this Court against the decision of the District Land and Housing Tribunal for Arusha (the trial Tribunal) in Application No. 28 of 2013 delivered on 16/7/2020. The Application is supported by the affidavit of the Applicant. The Respondent contested the Application by filing a counter affidavit deposed by himself.

Before this Court, the Applicant was represented by Mr. Joseph Mniko, learned advocate, while the Respondent was represented by Mr. Eliakim Sikawa, learned advocate. The application was disposed through filing of written submissions.

Submitting on the substance of the Application, Mr. Mniko contended that the main reason for the delay to file the appeal is the sickness that befell the Applicant immediately after the judgment was delivered. According to Mr. Mniko, the Applicant was suffering from enlarged prostate ("Tezi dume"). That he was admitted at Huduma Health Centre in Mwanza from 21/7/2021 and was discharged on 5/8/2021. Mr Mniko fortified that the Applicant felt sick only five days after the judgment was delivered and he was hospitalized for 16 days.

After he was admitted, the Applicant was also given condition that he should remove the catheter after 2 weeks and TCA was to be done after 3 weeks. The Applicant was also exempted from duties for 3 months which were to end in January, 2020.

Mr. Mniko further submitted that, after getting better, the Applicant started to look for an advocate in Mwanza to give him legal advice and help him in the appeal processes. When he got one, the unnamed advocate informed him that he was out of time. He eventually filed this Application on 3/12/2020. The learned advocate insisted that the delay was not intentional, considering the old age of the Applicant and the seriousness of the sickness he was suffering from. According to Mr. Mniko, sickness has been held to be sufficient cause for the delay. He cited numerous decisions to that effect; including: ***Kapapa Kumpindi Vs. Plant Manager, Tanzania Breweries Ltd***, Civil Application No. 6 of 2010; ***Mgabo Yusuph Vs. Chamliho Yusuph***, Civil Appeal No. 22 of 2019, ***Ally Omari Vs. Abdallah Makeka***, Civil Appeal No. 112 of 2004 and ***Richard Mlagala & 9 Others Vs. Aikael Minja & 3 Others***, Civil Application No. 134 of 2019 (all unreported). He concluded by urging the Court to allow the Application since the Applicant was prevented by reasons beyond his control.

Contesting the application, Mr. Sikawa submitted that the reasons adduced by the Applicant in the affidavit are not true because the Applicant had five days before he was admitted within which he could file the appeal, and also that after being discharged, he had 23 days within which to appeal. According to the advocate for the Respondent, considering that the Applicant was able to go to hospital after getting discharged, the same way he could go to a lawyer for appeal purposes. Mr. Sikawa further submitted that the medical chit attached in the affidavit in support of the application misses essential features such as

the stamp and signature. In his view, the document is suspect and its originality doubtful. Mr. Sikawa contested the calculations stated by the advocate for the Applicant as the same are not contained in the affidavit. Relating to the cited decision of Kapapa (supra), the learned advocate stated that it was distinguishable from the facts of this case.

Mr. Sikawa conceded that sickness is a sufficient ground for extending time but added that the sickness is subject to proof. He maintained that in this Application the authenticity of the medical report was doubtful. The learned advocate countered the cases cited by Mr. Mniko, stating that they are not binding to this Court. Mr. Sikawa argued further that in the trial Tribunal the Applicant was unsuccessful due to lapse of time therefore there are no basis for him to state that there are high chances of success. In his view, the Application is aimed at delaying the rights of the Respondent who is the rightful owner of the suit property.

In a rejoinder submission, Mr. Mniko stated that the impugned judgment was delivered on a Thursday; therefore out of the 5 days that he was well only 2 were working days. He added that the Applicant could not foresee that he would fall sick before the expiry of the 45 days allowed for an appeal. According to Mr. Mniko, at the time of judgment, the Applicant had no legal representation and that he fell sick outside Arusha; therefore, it was impossible for the Applicant to appeal on time. Regarding the authenticity of the medical chit, Mr. Mniko submitted that the same has a logo, name of the Health Centre, signature and stamp. In case of doubts, one could verify the same from the Centre. On the calculation of the dates, Mr. Mniko maintained that he used the affidavit and the medical report to make the calculation of time. Mr. Mniko maintained that it was impossible for them to put everything in the pleadings. The learned advocate fortified that the High Court cases referred to are meant to show how

this Court has dealt with sickness as a basis of condoning a delay following Kapapa's decision. On the lapse of time, Mr. Mniko submitted that the Respondent did not include such allegations in his counter affidavit or any proof thereof while submitting.

I have accorded deserving weight to the affidavits of the parties and the submissions by counsel for both parties. The main issue for determination is whether the Applicant has adduced sufficient cause to warrant extension of time sought.

The Court of Appeal in ***Bharya Engineering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor***, Civil Application No. 342/01 of 2017 (unreported), had this to say:

"...the Court will only exercise its discretion in favour of an applicant only upon showing good cause for the delay. What amounts to good cause cannot be laid by any hard and fast rules but is dependent upon the facts obtaining in each particular case."

The question is whether the Applicant herein has adduced good cause for the delay. The ground for the Applicant's delay in filing his appeal is deponed under paragraphs 3, 4 and 5 of the affidavit in support of the Application. The sole reason advanced is that immediately after the judgment was delivered the Applicant fell sick. He suffered prostate cancer ('tezi dume'). A Medical report was annexed in the application. Mr. Sikawa faulted the medical report on account that it does not contain essentials such as signature and stamp. He added that its genuineness and authenticity is doubted. On his part, Mr. Mniko submitted that the medical report has a logo and the name of the Medical Health Centre. He maintained that the original document has signature and stamp.

I have closely examined the medical report (Annexure Luka 1), but I have completely failed to comprehend what is contained therein. The document is

not legible. It is very faint. The stamp and signature complained by the Respondent's counsel can hardly be seen. This has made it difficult for this Court to appreciate what has been submitted by Mr. Mniko on its genuineness and to ascertain whether the Applicant was really sick and that he was admitted.

In as much as I agree with Mr. Mniko that sickness amounts to sufficient reason for extending time; it is imperative that proof of the sickness be adequately given. In this application, the medical report attached as a proof of the Applicant's sickness is illegible. It is impossible to rely on it as proof of the Applicant's sickness. Mr. Mniko submitted that the original one has a logo and signature, but the one annexed in the application, is not an original one. One would have expected the learned counsel to submit in Court a legible copy or avail the original for inspection; but, the learned counsel did none of those. This failure renders the submission made about the original one being legible and containing all the essential feature rather suspect. This Court cannot determine merits of the application in the absence of proof of the Applicant's sickness.

Before concluding, there is yet another irregularity in the application. It is noted that the decision intended to be appealed against (that is the decision in Application No. 28 of 2013) was not attached to the Applicant's Application. That decision ought to have been part of the records supporting the application so as to give the Court an opportunity to examine a number of issues, including the date that it was delivered. Further, in paragraph 7 of the Applicant's affidavit, it is deposed that the application has overwhelming chances of success. That could only be appreciated after reading the impugned decision.

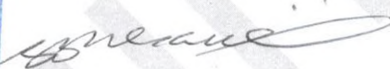
Furthermore, in the Respondent's submissions, there is a contention that the Applicant failed at the trial tribunal because of lapse of time. It is difficult for this Court to appreciate the merits or demerits of such an allegation unless the

impugned decision is presented before the Court for scrutiny. Therefore, failure by the Applicant to attach the impugned decision in this application is fatal. I say so considering the fact that the application was filed by an advocate who is conversant with Court procedures.

Guided by the above reasons, it is the finding of this Court that the Applicant has failed to properly move the Court to grant him the extension of time sought. The reasons for the delay is found wanting for failure of the Applicant to prove that he was sick and that he was admitted as alleged. Further, the Applicant has failed to attach the impugned decision in this application. This renders the application incompetent. I therefore strike out the application with costs.

Order accordingly.




Y. B. Masara

JUDGE

22nd October, 2021.