

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOKA DISTRICT REGISTRY
LAND APPEAL NO. 25 OF 2021

(Originating from Miscellaneous Application No. 421 of 2020 of DLHT for Kagera at Bukoba. Originating from Application No. 21 of 2017)

RAMADHANI NURU SHABAANAPPELLANT

VERSUS

FINCA MICRO FINANCE LTD.....1ST RESPONDENT

NSOMBO COMPANY LTD.....2ND RESPONDENT

JUDGMENT

06/10/2021 & 15/10/2021

NGIGWANA, J.

This appeal arises from the ruling of the District Land and Housing Tribunal for Kagera at Bukoba delivered on 22/02/2021 in Misc. Land Application No.421 of 2020 whereby the Appellant lodged an application under certificate of urgency, and by way of chamber summons made under section 14 (1) of the Law of Limitation Act Cap 89 R: E 2019 seeking the indulgence of the tribunal to extend time within which to set aside the dismissal order entered on 20/05/2020 for non-appearance dismissing Application No.06 of 2020 which was lodged by the appellant after the 2nd respondent FINCA MICROFINANCE LTD had served him with a notice of selling the mortgaged premises, the act which the appellant believed that it was in contravention of the agreed terms and the laws of the land.

The application was argued by way of written submission. Finally, the tribunal found that there was failure on the applicant's side to demonstrate good cause sufficient to convince the court to grant the application.

Aggrieved, the appellant preferred an appeal to this court against the ruling of the DLHT on two grounds; **One**, that despite abundant testimonies including the tendered Hospital documentations supporting the reasons for the delay, the learned Chairman grossly misdirected himself by dismissing the application on failure to account for the same reason. **Two**, that further the Chairman immensely erred in law and fact by determining the matter reasoning on the non-existence of the pending case which was sought to be restored. Wherefore, the appellant prays for judgment and decree on appeal against the respondent as follows;

- (i) The order of the DLHT be reversed.
- (ii) This appeal be allowed with costs
- (iii) Any other relief (s) this Honorable Court may deem fit and just to grant

Resisting this appeal, the respondents filed the reply to the petition. At the hearing of this appeal the appellant appeared in person and unrepresented while the respondents enjoyed the services of Mr. Steven Kaswahili, learned counsel.

Amplifying on the first ground of appeal, the applicant submitted that the reason for the delay was sickness. He added that, he managed to demonstrate good and sufficient cause warranting grant of the application, therefore the extension of time ought to have been granted. The appellant submitted nothing in respect of the 2nd ground of appeal.

In reaction, Kaswahili, learned counsel for the respondents submitted that the decision of the DLHT is very proper for the reason that the appellant had failed to demonstrate good cause for the delay. He went on submitting that

the matter sought to be restored was dismissed on 20/05/2020 but an application for restoration was lodged on 10/12/2020, hence there was delay of 173 days. He further submitted that the appellant had the duty to account for each day of delay but he had failed to discharge such a duty. Kaswahili referred this court to the case of **Dar es Salaam City Council versus S. Group Security Co. Ltd, Civil Application No.234 of 2015** where the Court of appeal held that, as a matter of general principle, it is always in the discretion of the court to grant extension of time, but the stance which the court has consistently taken is that, in an application for extension of time, the applicant has to account for every day of delay.

It is Kaswahili's further submission that, the appellant annexed **"the patient referral form"** and a **" letter of his non-attendance to court"** to the affidavit but the said letter dated 9/05/2020 was correctly disregarded by the DLHT because the same had no seal of the said tribunal to prove reception, and that the same was meant to inform the tribunal that the appellant would not enter appearance of 14/05/2020 therefore, it had nothing to do with 20/05/2020, the date in which Application No.06 of 2020 was dismissed for the non-appearance of the appellant. He also added that the Patient referral form dated 12/05/2020 was correctly disregarded since it had no seal and name of the Medical Doctor who issued it.

Kaswahili added that, the appellant had the duty to establish that he was referred from Bukoba Regional Hospital to Bugando Referral Hospital, and a duty to explain what transpired after his arrival to the said Hospital. Kaswahili also argued that, the founding affidavit is silent as to whether the appellant ever asked in writing to be supplied with the copy of the dismissal order.

As regards the 2nd ground of appeal, Kaswahili submitted that in December 2020, the Appellant sought for an interim order vide Misc. Application No.18 of 2020 whereas the same was issued pending determination of Application No. 421 of 2021, and since the said application was dismissed, there was no pending case involving the parties before the DLHT. The learned counsel ended his submission by urging the court to dismiss the appeal with costs.

Having seen the rival submissions in respect of the first ground of appeal, and submission by made by Mr. Kaswahili in respect of the 2nd ground of appeal the sole issue which need to be resolved is whether the appellant had displayed before the DLHT sufficient reasons warranting grant of the application.

It is settled that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason (s) for delay. This principle was clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227 that,

"... an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause"

The term sufficient cause is has not been defined as stipulated in the case of Tanga **Cement Company Ltd vesus Jumanne D.Masangwa and Another**, Civil Application No.6 of 2001 where the Court of Appeal held that

"What amounts to sufficient cause has not been defined. From the decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant"

The Court of Appeal further stated in the case of **Finca (T) Limited and Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) that;

"It is settled that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for the delay. Conversely, it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur."

Furthermore, in the case of **LEO SILA MUTISO VERSUS HELLEN WANGARI MWANGI [1999] 2EA 231** the court held that, it is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also settled that, that general matters which the court has to take into account in deciding whether to grant an extension of time are; **first**, the length of the delay, **secondly**, the reason for the delay, **thirdly**, the chances of the appeal succeeding if the application is granted; and **fourthly**, the degree of prejudice to the respondent if the application is granted

In the case at hand, the record vividly shows that the ground given for the delay was **sickness/illness** as articulated in the following Paragraphs of the applicant's affidavit;

In the case at hand, the ground given for the delay was **illness** as articulated in the following Paragraphs;

3. *That nevertheless, before the fixed hearing date, the applicant developed an acute backache after being involved in a car accident and had to be referred to Bugando Medical Centre from the Bukoba Referral Hospital for the advanced treatment. **The copy of the Patient Referral Form marked Annexure "A" is herewith attached to form part of this affidavit with the leave of the honorable tribunal***
4. *That in the process of attending the treatment case was fixed for the hearing on 20/05/2020 and I wrote and sent a letter of notice of absence that was filed in the honorable Tribunal. **The copy of the letter is marked annexure "B" is herewith attached to form part of this affidavit with the leave of this honorable tribunal***
6. *That, on gradual recovery from the sickness the applicant found his application already dismissed hence had to apply for the copy of the dismissal order.*
7. *That, despite the application for the supply of the copy of the order the applicant has to wait for a number of days until when it was certified on 6th day of August 2020. **The copy of the dismissal order marked annexure "C" and herewith attached to form part of this affidavit with the leave of the honorable tribunal.***
9. *That the applicant will suffer irreparable loss if this honorable tribunal will turn down the applicant's application since he had an interest in the property which is at jeopardy.*

There is no doubt that there are circumstances in which sickness/illness becomes a ground for extension of time. The Court of Appeal in **Kapapa Kumpindi versus the Plant Manager Tanzania Breweries**, Civil

Application No.2 of 2010 (Unreported) held that, sickness is a ground for extension of time. However, it must be noted that not every time that the reason of illness is cited, then the court must extend time. Sickness or Illness becomes a ground for extension of time only when it is proved that indeed it is the sickness that caused the delay. Just mentioning does not do. See **Mgabo Yusuph versus Chamriho Yusuph**, Civil appeal No.22 of 2019 HC (Unreported)

However, in **Charles Pantaleo Kingoka versus Abas Musa Kitoi**, Civil Application No.71/76 of 2019 the Court of Appeal held that;

"There must an account of each day of delay. Delay even of a single day, has to be accounted for"

Generally, from the herein above authorities, it can be learnt that extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the court. That the law does not set any minimum or maximum period of delay. The applicant must give valid, clear and sufficient reasons upon which the discretion can be favorably exercised.

In the case at hand, under paragraph 3 of his affidavit, the appellant alleged that some years back, he was involved in a serious motor accident, but as correctly stated by the DLHT, no medical documents attached to the affidavit to substantiate his claim. Furthermore, the patient Referral form with reference No. HD. 147/167/01/219 was issued on 12/05/2020 revealed that that it was signed by Dr. Hakim. The appellant attached nothing to his affidavit to prove that, after being referred to Bugando Medical Centre he did go, and was hospitalized for medication or he was attended by that the

Medical Specialist and that he was attending several medical appointments at Bugando.

It is trite law that he who alleges on a certain fact has to prove the same. It is also trite that in application proceedings the affidavits constitute not only the pleadings but also the evidence. Equally straight that the applicant must make out his case in his founding affidavit and that he must stand or fall by the allegations contained therein. It follows therefore that the applicant must set out sufficient facts in his founding affidavit which will entitle him to the relief sought. In this matter, no sufficient facts were set out to entitle the applicant to the relief he sought in the DLHT.

The appellant wrote and sent a letter of notice of absence but as correctly stated by Mr. Kaswahili, the same was not stamped to show that it was received, and even if the same reached the DLHT, it was meant for a specific date. The title of the letter reads” **YAH: KUTOHUDHURIA KESI KATIKA BARAZA -14/05/2020**” therefore the letter had nothing to do with 20/05/2020, the date in which application No.06 of 2020 was dismissed, and as a result Application for extension of time was filed on 10/12/2020. The delay was not accounted by the applicant as required by the law. As correctly found by the DLHT and correctly submitted by Mr. Kaswahili, appellant has miserably failed to give valid, clear and sufficient reasons upon which the discretion can be favorably exercised.

I would also like to add that, upon perusal of the tribunal record, this court learned that the matter has been overtaken by event since the mortgaged house had been sold to George Kamugisha on 12/12/2020 at TZS 5,200,000/= so it is my considered view that under those circumstances,

even if the appeal is to be allowed and the application is restored, it will serve no purpose.

In the premises and for the foregoing reasons, I am inclined to hold that this appeal lacks merits and is hereby dismissed. Each Party to bear its own costs.

It is so ordered.




E. L. NGIGWANA

JUDGE

15/10 /2021

Judgment delivered this 15th day of October, 2021 in the presence of the Appellant in person, Mr. E.M. Kamaleki, Judges' Law Assistant and Gosbert Rugaika, but in the absence of the Respondents.




E. L. NGIGWANA

JUDGE

15/10 /2021

