

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

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 75 OF 2021**

**OMAHE GARANI ..... APPLICANT**

***VERSUS***

**WAMBURA FRANCIS ..... RESPONDENT**  
***(Application for extension of time within to appeal from the decision  
of the District Land and Housing Tribunal for Tarime at Tarime  
in Misc. Application No. 168 of 2018)***

**RULING**

3<sup>rd</sup> and 6<sup>th</sup> December, 2021

**KISANYA, J.:**

In this application, the Court is being moved for an order that the time within which to lodge an appeal from the ruling of the District Land and Housing Tribunal for Tarime at Tarime (District Tribunal) in Misc. Application No. 168 of 2018 be extended. The application is made by Chamber Summons preferred under section 41(2) of the Land Disputes Courts Act [Cap. 216, R.E 2019] (the LDCA), section 14(1) of the Law of Limitation Act [Cap. 89, R.E. 2019] and section 95 of the Civil Procedure Code [Cap. 33, R.E. 2019]. It is also supported by an affidavit sworn by the applicant, Omahe Garani on 21<sup>st</sup> September, 2021. The respondent, Wambura

Francis filed a counter-affidavit to contest the application.

From the documents placed before this Court, the undisputed facts giving rise to this matter are that the applicant appearing in the District Tribunal (Misc. Application No. 168 of 2018) seeking extension of time within which to appeal against the decision of the Turwa Ward Tribunal in Land Case No. 13 of 2017. In its ruling dated and delivered on 31<sup>st</sup> December, 2020, the District Tribunal declined to extend time upon being satisfied that the respondent had not shown good cause for the delay. Therefore, the applicant has filed the present application after failing to appeal within time prescribed by the law. It is on record that the application was filed on 23<sup>rd</sup> September, 2021.

At the hearing of this matter, both the applicant and respondent appeared in person, unrepresented.

When invited to submit in support of the application, the applicant prayed to adopt his affidavit to form part of his submission. He submitted that the delay was caused by sickness whereby, he was admitted on Tarime District Hospital on 5<sup>th</sup> January, 2021 and

discharged in the same month. According to the applicant, he was instructed to attend medical checkup every month. On the basis of the foregoing, the applicant prayed this Court to grant the application.

The respondent resisted the application. He submitted that the applicant had not produced evidence to prove that he was sick during the period of delay. In that regard, the respondent asked the Court to dismiss the application.

Rejoining, the applicant submitted that the medical evidence had been appended to the supporting affidavit.

In invoking the provisions of section 41(2) of the LDCA, the guiding principle in granting extension of time to appeal is for this Court to be satisfied that good cause for the delay has been shown. Therefore, the issue for determination is whether good cause had been shown for the delay in filing the appeal from the District Tribunal.

The law does not define what amounts to good cause. However, case law has established factors to be considered in

determining whether good cause has been established. Some of the factors include, the length of the delay; whether the applicant have accounted for all the period of delay and demonstrated diligence and not laziness, negligence or sloppiness in taking the required step; whether the Court finds other sufficient reasons, such as the existence of a point of law of sufficient importance, like the illegality of the decision sought to be challenged. See the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). It is also an established principle that delay of even a single day must be accounted. See for instance, the case of **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported).

Reverting to the issue under consideration, it is common ground that the applicant has advanced sickness as the sole reason for the delay. I am live to the principle that sickness is a reason beyond human control. However, a person advancing sickness must prove it by medical evidence and demonstrate how the said sickness attributed to the delay. This position was stated in the case of

**Nyanza Road Works Limited vs Giovanni Guidon, Civil Appeal**

No. 75 of 2021, CAT at Dodoma (tanzlii) in which the Court of Appeal

held:-

*"While there is no dispute on the respondent's heart complications which would ordinarily constitute good cause, the respondent did not satisfy the CMA that the delay was solely due to sickness. We think the learned advocates for the respondent's reference to **John David Kashekya v. The Attorney General** (supra) can only be relevant where sickness is the sole reason for the delay and properly explained. At any rate, even assuming the respondent's illness prevented him from referring his dispute within the prescribed time, there is no explanation why he delayed in applying for condonation." (Underline added).*

In the light of the above position, I have careful read the supporting affidavit. It is to the effect that the applicant fell sick from 5<sup>th</sup> to 20<sup>th</sup> January, 2021, when he was in the process of lodging the appeal. Indeed, the discharge form issued to the applicant (Annexure A to the supporting affidavit) shows that the applicant was admitted in Tarime Town Council Hospital on 5<sup>th</sup> January, 2021 and discharged

on 20<sup>th</sup> January, 2021. The doctor confirmed in his letter dated 30<sup>th</sup> August, 2021 (Annexure B to the supporting affidavit) that the applicant was discharged from the hospital when "he got improved."

That being the case, the applicant was discharged 20 days after the impugned ruling of the District Tribunal. In terms of section 41(1) of the LDCA, he was discharged when he was left with 25 days within which to file the appeal. He did not do so until 23<sup>rd</sup> September, 2021 when he lodged the present application. His contention that he did not recover upon being discharged was not supported by evidence. In absence of the evidence to the contrary, this Court believes the doctor who confirmed in Annexure B to the affidavit that the applicant was discharged as his health improved. Further to this, the discharge form (Annexure A) and the doctor's letter (Annexure B) show that the applicant was advised to attend health/mental clinic every month. However, the applicant did not produce any evidence to prove that he attended monthly clinic during the period of delay.


On the basis of the foregoing, this Court is of the considered view that, the applicant did not prove that he was sick during the

whole period of delay. It goes without saying that the applicant has failed to account for the delay of more than seven months, from 15<sup>th</sup> February, 2021 when time within which to appeal lapsed to 23<sup>rd</sup> September, 2021 when the present application was lodged in this Court.

In the event, the Court finds no merit in this application and dismisses it with costs.


DATED at MUSOMA this 6<sup>th</sup> day of December, 2021.



  
E.S Kisanya  
JUDGE

Court: Ruling delivered through teleconference this 6<sup>th</sup> day of December, 2021 in appearance of both parties.

Right of appeal explained.

  
E.S Kisanya  
JUDGE  
06/12/2021