

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 4 OF 2021**

(Originating from Land Appeal No. 103 of 2015)

**ALOISI JUMA..... APPLICANT**

**VERSUS**

**LOTI MBISE..... RESPONDENT**

**RULING**

15/10/2021 & 12/11/2021

**ROBERT, J:-**

This is a ruling on an application for extension of time within which to lodge an appeal to this court against the decision of the District Land and Housing Tribunal for Arusha at Arusha in Land Appeal No. 103 of 2015 which was delivered on 12<sup>th</sup> May, 2015.

The application was brought under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2002. It is supported by the sworn affidavit of **Ms. Mariam Jackson Nitume**, learned counsel for the applicant.

At the request of parties, this application was argued by filing written submissions whereby **Ms. Miriam Jackson Nitume**, learned counsel represented the applicant whereas the respondent appeared in person, unrepresented.

Submitting in support of the application, Ms. Nitume argued that, the applicant unsuccessfully appealed to the District Land and Housing Tribunal (DLHT) in Land appeal No. 103 of 2015 originating from Land Dispute No. 3 of 2015 at Mbuguni Ward Tribunal. At the DLHT, the right to appeal was explained to the parties, however, due to long sickness the applicant failed to appeal within time.

She submitted further that, Land Complaint No. 3 of 2015 and Appeal no. 103 of 2015 are full of irregularities, injustice and were improperly procured as both the applicant and respondent were not the legal representatives of the owners of the disputed land hence, illegality on the face of record which call for rectification. She maintained that, if given opportunity, the applicant will divulge further and better particulars of the alleged illegality.

She made reference to the case of **Yohana Msuka vs Peter Lutema**, Misc. Civil Application No. 144 of 2017, (unreported) and **The Principal Secretary Ministry of Defence and National Service vs**

**Devram Valambia**, 1992 TLR 387 in support of her arguments and prayed for this application to be granted.

Opposing the application, the applicant submitted that, sickness is a natural thing and nobody asks for it, however, the applicant could have appointed his relatives to represent him during the time he was sick. Further to that, the applicant failed to notify the Court of his sickness through a letter. Thus, the applicant failed to demonstrate good reasons for delay and prayed for this application to be dismissed with costs for lack of merit.

In her brief rejoinder, Ms. Nitume maintained that as long the case was between the applicant and the respondent, the relatives of the applicant could not appeal in this matter since they were not party to the original case.

From the submissions of parties and records in support of this application, the main question for determination is whether the applicant has demonstrated sufficient cause for the delay to warrant extension of time.

In order for the court to exercise its discretionary powers to grant the orders sought, the applicant must demonstrate sufficient cause for delay. This application is sought against the judgement and decree in

Appeal No. 103 of 2015 delivered on 12/5/2017. Thus, the applicant is required to account for each day of delay from 12/5/2015 to 15/1/2021 when he filed this application which is more than five (5) years ago. Unfortunately, the applicant failed to do that.


The applicant alleged that he was sick in the past five years that's why he was not able to file his appeal within the prescribed time. This Court is aware that sickness of an applicant may be a good ground for failure to file an appeal within the prescribed, however, it has to be backed up by concrete evidence. In the instant application, there is no evidence to establish the applicant's sickness.

Further to this, the applicant alleged that, there is illegality on the decision sought to be challenged on appeal. He maintained that both the appellant and respondent in Appeal No. 103 of 2015 were not legal representatives of the deceased who is the owner of the disputed land. Based on that, he prayed for the this application to be granted in order that he may challenge the decision of the lower courts.

This court is aware that illegality in the decision sought to be challenged can be a good ground for enlargement of time to file an appeal. However, this Court did not find any palpable evidence to establish, on the face of it, that the alleged illegality exists in the judgment

of the lower courts. The applicant's allegations that parties in this suit had no locus standi to sue in appeal No. 103 of 2015 because they are not legal representatives of the owner are not substantiated. In the circumstances, this application cannot be granted. That said, this application is dismissed for lack of merit.

It is so ordered.



K.N. ROBERT  
JUDGE  
12/11/2021