

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT DODOMA

MISC. LAND APPLICATION NO. 95 OF 2019

(Arising from Land Application No. 114 of 2016 of the District Land and Housing Tribunal for Singida at Singida dated 21/12/2018)

IBRAHIM ALLY APPLICANT

VERSUS

SUZANA NAKEMBETWA SAMSON RESPONDENT

RULING

29/11/2021 & 6/12/2021

KAGOMBA, J

On 27/8/2019 IBRAHIM ALLY ("The Applicant") filed a chamber summons in this court moving the court to grant him an extension of time to appeal. He also prayed for costs and any other relief (s) this court shall deem fit and fair to grant.

The application is supported by grounds set forth in the affidavit of the applicant and further facts which were to be adduced at the hearing. In his affidavit the applicant states that he was the respondent in the application filed at Singida District Land and Housing Tribunal (hereinafter "Singida DLHT") where the Tribunal decided in favour of the respondent, SUZANA NAKEMBETWA SAMSON, who was then the applicant. The applicant further states that after pronouncement of the Judgment, which aggrieved him, he made several follow up to obtain a copy of judgment but unfortunately, he fell sick and the sickness made him fail to complete the follow up to obtain the said copy of the judgment for filing his appeal within time. He annexed

to his affidavit a letter with Ref. SRRH/M/10/101 dated 9th April, 2019 from Singida Regional Referral Hospital, signed by Dr. Bariki Misholi for Medical Officer In-charge. The letter confirms that IBRAHIM 74 YEARS OLD FROM SINGIDA has been sick since 2006. He suffers from chronic diabetes mellitus (type 2 diabetes) and diabetes cardiomyopathy which makes him hospitalized sometimes. The applicant further avers in his affidavit that the delay in filing his Appeal was neither deliberate nor negligence and that if the leave to file a suit is not made the applicant will be denied his fundamental right of being heard.

On her side SUZANA NAKEMBETWA SAMSON, the respondent, filed her counter affidavit in opposition to what was averred by the applicant in his affidavit. The respondent stated that the Applicant lives in Singida town and the land tribunal is situated in Singida town as well. She says, this could not create any difficult circumstances to obtain copy of judgment and file an appeal within time. She said, the time spent by the applicant from the date of judgment until when he filed his application is almost eight (8) months which is too long a period of time to justify.

The respondent further averred that the letter from Singida Regional Referral Hospital, which was annexed to the applicant's affidavit do state that the applicant has been hospitalized sometimes and not always. She said, by that statement, the applicant had time to spend in making follow up of the copy of judgment and file his Appeal within time. She further stated in the counter affidavit that the entire facts deposed in the affidavit portrayed some negligence in the delay.

On the applicant's averment that if a leave of the court will not be given his right to be heard will be affected, the respondent stated that the right to be heard should be exercised within the ambit of the law and failure to observe the same amounted to personal will and desire of not to use one's right to be heard.

During hearing of the application, Mr. Felix Ngunda, learned advocate represented the applicant, while Mr. Lucas Komba appeared for the respondent.

Mr. Ngunda submitted to the court that the application is made under section 41 of the Written Law Miscellaneous Amendment No. 2 Act of 2016 and section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019] as well as section 95 of the Civil Procedure Code [Cap 11 R.E 2019]. He expounded on what was averred by the applicant in the supporting affidavit, adding that the impugned judgment of Singida District Land and Housing Tribunal was delivered on 21/12/2018.

In emphasizing on the need to give the applicant a right to be heard, Mr. Ngunda referred to the case of **NYAMWIKONDO W. TIMAN VS. JAMAL HUSSEIN**, High Court of Mwanza, Misc. Land Appeal No. 3 of 2021 (unreported) where it was stated that the right to be heard is one of the fundamental rights of a litigant in trial and failure of trial court to give the parties right to be heard is illegality. He concluded by submitting that the reason stated for delay amounts to good cause and prayed the court to grant the applicant an extension of time to file the intended appeal.

Mr. Komba, for the respondent, rose to oppose the application, by submitting that the applicant has not adduced good reason for the application to be granted. He submitted further that the applicant was not denied right to be heard as he was given time to file his appeal but decided to sit on it himself.

Regarding the applicant's sickness as the reason for delay, Mr. Komba said that reason has no merit because; one, he was receiving treatment at a hospital in Singida, where the Singida District Land and Housing Tribunal is located. Two, he was not admitted at hospital, or he was not in hospital for the whole period of delay as he was receiving treatment at home.

Mr. Komba further challenged the affidavit by not showing which date he was going to hospital and which dates he was at home. He said, for these reasons, the applicant has not adduced sufficient reason. Mr. Komba further stated that the Land in dispute was handed over to the respondent by the Singida District Land and Housing Tribunal after the Judgment. He said, for that reason the application has been overtaken by event as execution has been done and completed. He argued that there is no merit in extending time after execution is completed. He wound up his submission by praying the court to dismiss the application with costs.

Mr. Ngunda in his brief rejoinder, opposed the submission by the respondent's advocate that the applicant played with his right to appeal. He reiterated his submission in chief that the delay was caused by applicant's sickness. He therefore prayed the court to grant the application, regardless of the fact that execution has been done, as his client still has the intention to appeal.

Having heard the rival submission of the advocates for both parties, this court has to determine whether the applicant has adduced sufficient reason for his application to be granted or not.

In determining the above issue, I find guidance in the decision of the court of Appeal in **LYAMUYA CONSTRUCTION COMPANY LTD vs BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA**, Civil Application No. 2 of 2010 (unreported) where the court sat the following guiding criteria;

- (i) The degree of the lateness
- (ii) The reason for lateness
- (iii) The prospect of succeeding in the intended appeal and obtaining the relief sought against the other party
- (iv) Whether there will be prejudice to the other party.

By Applying the above criteria, one by one, it is my finding that the degree of lateness is too high. The decision of the Singida District Land and Housing Tribunal which the applicant seeks to eventually overturn was delivered on 21/12/2018, it was certified on 11/02/2019 while this application was filed on 27/8/2019, being over six (6) months since a certified copy of the judgment was available for collection. This is too long a period by any standard.

The reason for lateness is the applicant's sickness. The applicant's affidavit, apart from showing that the applicant has been facing health challenges as explained in annexure E2 to the affidavit, it does not show whether or not the applicant was sick all the time so that he could not be able to move. Annexure E2 to the affidavit is highly generalized. In this type

of application, the applicant cannot convince the court by being too general on the substantive cause of delay. As correctly submitted by Mr. Komba, the applicant was not hospitalized. The affidavit does not state so. As such the reason for the lateness fell short of being sufficient for the above explanation.

Regarding the prospect of succeeding in his intended appeal, the applicant has not stated anything about it. The court cannot go into details about how the Singida District Land and Housing Tribunal reached at the impugned judgment. However, the fact that the decision was reached after an inter-parte trial with assessors and a decision has been executed to finality, the chances of the applicant to succeed are slim.

I should make it clear that it is not impossible for the applicant to win the appeal if extension of time was to be granted. The assessment which the Court makes at his juncture is a rough assessment basing on the face of record as the Court cannot go into the merit of the appeal. Therefore, as the applicant has not pleaded about his prospects of succeeding in the appeal, albeit with the fact that execution has been done, the court has no base to find merit in the application on this criterion.


Lastly, whether by granting the extension there will be prejudice to the respondent, the answer is in the affirmative. The respondent having won the suit at Singida District Land and Housing Tribunal and having executed the decree made by the Singida District Land and Housing Tribunal, this matter is now behind her back. It is over. Any court decision that revives it after all

this long will come at her detriment. It will be an interference with her otherwise legitimate enjoyment to her ownership of the suit land.

It is the view of this court, therefore that the applicant has not adduced sufficient reason for the application to be granted. Litigations should come to an end as a matter of public policy. I accordingly dismiss the application with no order as to costs.

It is so ordered.




ABDI S. KAGOMBA
JUDGE
6/12/2021