

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. LAND APPLICATION NO. 79 OF 2021

*(Originating from Land Application No, 100 of 2013, Babati District Land and
Housing Tribunal)*

ALLY LAGWEN APPLICANT

VERSUS

MATILDA PETER BEI RESPONDENT

RULING

25/04/2022 & 13/06/2022

KAMUZORA, J.

The Applicant preferred this application seeking for extension of time to appeal to this court against the decision of the District Land and Housing Tribunal (the tribunal) of Arusha in Application No. 100/2013 that was delivered on 27th April, 2021. The application was brought under the provision of section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019 and supported by an affidavit sworn by the Applicant himself. The application is strongly opposed through the counter affidavit deposed by the Respondent.

When the matter was called for hearing the Applicant and the Respondents had no any representation hence, they appeared in person.

Hearing of the application proceeded by way of written submissions and both parties filed their submissions as scheduled save that the Applicant did not prefer to file any rejoinder submission.

The brief background leading to this application is that, the Respondent sued the Applicant in the District Land and Housing Tribunal (the trial tribunal) vide Application No. 100/2013 and the judgment was entered in favour of the Respondent. Dissatisfied, and as the time to appeal had already lapsed, the Applicant preferred this application seeking an order of this court enlarging time to appeal. The main issue calling for the determination by this court is whether the Applicant has demonstrated sufficient reasons for the delay.

Submitting in support of the application the Applicant acknowledged that, it is a common knowledge to all members of this noble profession that for the court of law to exercise the discretionary powers conferred to it under section 41(2) of the Land Disputes Courts Act (Cap 216) R.E 2019 to grant extension of time, there must be sufficient cause worth of moving this court for such. That, the court must be supplied with sufficient and tangible evidence it can rely to invoke its power judiciously.

The Applicant claimed that, the reasons assigned and the evidence annexed in the affidavit constitutes sufficient cause worth moving this court to invoke its discretionary powers as the appellant was not laxity or negligent but was prompted by natural calamity of sickness and the Applicant had no control or ability to postpone. That, getting sick is not a matter of choice or arrangement it is unforeseen event and that no any human being under the sun can re-schedule sickness simply because the prescribed time to file an appeal is about to lapse. That, the medical prescription form lamed together with the affidavit is from a reputable and recognised hospital therefore proves beyond shadow that the Applicant was sick and went to Levوسي hospital and was letter transferred to Mount Meru Hospital where he was diagnosed and later discharged. That, he then he took action instantly by filling the current application.

The Applicant added that, there is no any tangible evidence annexed in the counter affidavit worth of discrediting or pre-empting the authenticity of such evidence. To cement his submission, he cited the case of **Sadru Mangaji v Abdull Aziz Lalani and another**, Misc. Commercial Application No. 126/2016.

The Applicant finalised by stating that it is in the interest of justice that the Applicant's application be granted and that no any injustice shall be occasioned to the Respondent if application at hand will be granted.

Opposing the application, the Respondent submitted that, it is undisputed fact that the issue of natural calamity or sickness had no control over it as evidenced produced by the Applicant. That, the Applicant evidence was weak and leave a lot of gaps as no referral letter from Levolosi Hospital to Arusha regional hospital (Mount Meru) or Prescription form to justify the period when he was admitted and discharged.

The Respondent further submitted that, the Applicant had not showed a strong reason which can hold any merit hence the application for extension of time has no merit at all. The Respondent prays that the same be dismissed with costs and this court uphold the decision of Babati District Land and Housing Tribunal.

The law applicable for this matter is section 41(2) of the Land Disputes Courts Act Cap 216 R.E 2019 which provides that,

*"(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: Provided that, the High Court may, **for the good cause**, extend the time for filing*

an appeal either before or after the expiration of such period of forty five days."

The grant of extension of time is a matter of discretion of the court, the discretion which however must be exercised judiciously. The term judicial discretion has been defined in the case of **Mwita Mhere Vs Republic** [2005] TLR 107 page 113 where the court defined it by citing Blacks' law dictionary, 6th edition and held that,

"Judicial discretion is the exercise of judgment by a judge or court based on what is fair under the circumstance and guided by the rules of law... court has to demonstrate, however briefly, how the discretion has been exercised to reach the decision it takes..."

The superior court of Tanzania has formulated the guidelines to be considered in granting the extension of time in the case of **Lyamuya Construction Company Limited V Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported). The court held that: -

"On the authorities however, the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."

The Applicant brought to the attention of this court the issue of sickness as the reason for delay and as a ground for extension of time. The ground of sickness and illness has in various occasion been regarded by the courts in Tanzania as valid reasons for the grant of extension of time or any other order. For this see the case of **Tusekile Ducan vs. The Republic**, Civil Appeal No 202/2009 as well as the case of **John David Kashekya vs. The Attorney General**, Civil Application No 1 of 2012(Unreported) which cited in the case of **Pimark Profesyonel Mutfack Limited Sirket V Pimak Tanzania Ltd & Another**, Misc. Commercial Case No 55/2018 HC at Dar es Salaam (unreported) where the court regarded sickness as a sufficient ground for extension of time or even for setting aside the dismissal order.

It is with no doubt and reading the annexures **AA** in the Applicant's affidavit that, the decision in Application No. 100/2013 before the DLHT was pronounce on 27/04/2021. Since appeal has to be preferred within a period of 45 days from the date of decision, the time frame to lodge the appeal lapsed on 11/06/2021. The present application for extension

of time was filed in this court on 06/10/2021 as per exchequer receipt No.EC1010711785821P.

Reading from the annexed documents in the Applicant's affidavit annexure **BB** is a medical form showing that the Applicant was sick and hospitalised at Lovolos Hospital from 30/04/2021 to 28/09/2021. It is deponed under paragraph 5 of the Applicant's affidavit that, the Applicant had to undergo surgery for prostatitis and due to Applicant's age, it took him a long time to recover.

I agree with the Respondent that the issue of referral to Mount Meru Hospital was only raised during the submission but never deponed in the Applicant's affidavit and no document was attached to prove such fact. I will therefore determine the application based on the submission relating to the facts deponed in the affidavit and counter affidavit.

Reading annexure **BB** in the Applicant's affidavit, I am satisfied that the Applicant was able to prove that until 28/09/2021 he was sick and admitted at Levolosi Health Centre. The said annexure was signed and sealed by the Medical Doctor thus, proving such fact. Also, reading the Applicants affidavit under paragraph 5 and 6 the Applicant was able to prove that due to his age it took him time to recover from the sickness before he could start to make follow put of his case and seek for legal

assistance. Much as the record reveals that the present application was filed before this court on 07/10/2021 then, from 28/09/2021 when the Applicant was discharged from the hospital the delay was for only 9 days. The question here is whether the Applicant was able to account for 9 days of delay. Taking into account that the Applicant was sick and had to seek for legal assistance, the delayed for 9 days to me is not inordinate and could be reasonable time for the Applicant to prepare the documents for filing this application in court. I therefore find that the Applicant had good cause and has accounted for the delay. The Respondent did not state how the grant of the application will prejudice her.

For the above stated reasons, this court find merit in this application. In the event, hereby grant the Applicant extension of time to lodge his appeal before this court within the period of 21 days from the date of this ruling. No order as to costs is issued. It is so ordered.

DATED at **ARUSHA** this, 13th day of June 2022.


D.C. KAMUZORA
JUDGE
