

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

MISCELLANEOUS LAND APPLICATION NO.7 OF 2022

(Arising from High Court of Tanzania at Mtwara in Misc. Land Appeal No. 10 of 2020 and originating from the District Land and Housing Tribunal for Mtwara at Mtwara in Application No.10 of 2020)

HEMED ABDALLAH MKADIMBA (Administrator
of the estate of the late Abdallah Mkadimba).....**APPLICANT**

VERSUS

ASHA SAID MPUPA..... **1ST RESPONDENT**

ABDULSWANADU ALLY MNOMBA (Administrator of
estate of the late Ally Mohamed Mnomba).....**2ND RESPONDENT**

SALUM ABDALA CHILAMBO (Administrator of estate of
the late Abdallah Mnaliukila@Abdallah Katoto).....**3RD RESPONDENT**

ALLY HAMISI AKACHAPA.....**4TH RESPONDENT**

RULING

Date of last Order: 2/6/2022

Date of Judgment: 5/7/2022

LALTAIKA, J.:

This is an application for extension of time to lodge a notice of appeal to the Court of Appeal and leave to appeal to the Court of Appeal out of time. This application has been brought under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019], section 14(1) of the Law of Limitation Act, [Cap 89 R.E. 2002], section 47(2) of the Land Disputes Courts Act, [Cap 216 R.E. 2019] and any other enabling provisions of the

law. The application is supported by an affidavit affirmed by the applicant outlining the reasons for the application. Also, the application has not been resisted by the respondents vide their counter affidavits.

When this matter came for hearing on 2.6.2022 parties appeared in person and unrepresented except the first respondent did not enter appearance without notice. Thus, the matter proceeded in his abstentia. In that regard, the applicant made his submission which entire based on the appeal while this is an application seeking an extension of time to lodge his notice of appeal to the Court of Appeal and also seeking leave to appeal to the Court of Appeal out of time.

On the part of the respondents who appeared each submitted as follows. The second respondent submitted that they got some papers from the applicant and seems that he has taken to another level. He stressed that the matter was finalised on 5/10/2021 however, he heard from him on April 2022 that he is applying for an appeal. Furthermore, the second respondent argued that the appellant told them that he delayed to file his appeal out of time because he was sick.

As to the third respondent submitted that what he knows is that the case was finalised and the time has lapsed and he was surprised to see him with the papers. The fourth respondent submitted that the matter was finalised however, he was surprised how he managed to come in this court while time has elapsed.

Having gone through the submissions of both parties, I am inclined to decide on the merits or otherwise of the application. It is trite that an application for extension of time is entirely in the discretion of the court to grant or not. More so, extension of time may only be granted where it

has been sufficiently established that the delay was due to sufficient or good cause.

In the present application, the reason for the delay is featured under paragraph 5,6,7,8 and 9 of the affirmed affidavit of the applicant. The only reason advanced in those hereinabove outlined paragraphs is sickness of the applicant from date the intended impugned judgment was delivered to 13th December, 2021. For better understanding and interest of justice it is important to paraphrase the outlined paragraphs of the affidavit of the applicant which features the reason of sickness. These paragraphs reads: -

- 5. That being aggrieved by the said judgment on appeal of this honourable court I intended to make appeal to the Court of Appeal of Tanzania. However before elapse of the thirty days I was supposed to file the Notice of appeal I got serious sickness and I was admitted at the hospital styled Health Facility Namtumbuka.*
- 6. That my health was not stabilized until sometime on 13th December,2021 when I managed to travel from Namtumbuka village to Mtwara for making necessary steps for appealing to the court of appeal of Tanzania.*
- 7. That it has come to my attention that the time for filling Notice of appeal and Application for leave to appeal has expired and I was prevented to take necessary steps for the reason of*

sickness. The copy of the Medical attendance is attached and marked as Annexure 'HM-3' thus the leave of this Honorable Court is craved for the same to form part and parcel of this affidavit.

8. That, I failed to lodge Notice of Appeal to appeal to the Court of Appeal of Tanzania and Application for leave to appeal within time for the reasons beyond my control as since the date when the judgment was delivered on 5th day of October, 2021 I was serious sick as shown in annexure 'HM-3' above.

9. That, during all time I am pursuing this matter, I was not represented and I had never slept over my rights, therefore I am not negligent at all but rather due to sickness I failed to file Notice of Appeal and apply for leave to appeal within required time."

The next issue I am inclined to resolve is whether or not the reason advanced by the applicant amounts to good cause. Our law does not define what amounts to good cause. However, in the case of **Regional Mangaer, TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application No.9 of 2007 (Unreported) it was held that:-

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in reference to all the circumstances of each particular case. This means that

applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time"

As already alluded earlier the main reason advanced by the applicant for this application is sickness. As far as annexure 'HM-3' is concerned shows that the applicant went and admitted at Namtumbuka Health Facility on 22/10/2021 however, was discharged on 25/10/2021. Annexure 'HM-3' depicts that after the applicant's discharge, the doctor attending him directed that the applicant was supposed to go at the Health Facility for injectable medication of ceftrication dose for the remained three days. Thus, the applicant attended at the Namtumbuka Health Facility on 26/10/2021, 27/10/2021 and 28/10/2021 for ceftrication injection. However, the intended impugn judgment was delivered on 5/10/2021 in the presence of the applicant and all respondents. In addition, annexure 'HM-3' does not show if the applicant reported his sickness at the Namtumbuka Health Facility from 5/10/2021 however, the truth is that he reported on 22/10/2021 to 28/10/2021. Whereas, the application was filed on 25/3/2022 as per Exchequer Receipts No. EC101272781137IP and payment Control Number 991400623537.

Therefore, according to the annexure 'HM-3' it is undisputed that from 22/10/2021 to 28/10/2021 the applicant was sick. However, the question which tasks my head is what did the applicant do from 5/10/2021 to 21/10/2021? Also, what were the efforts taken by the applicant from the date he stopped going at the Namtumbuka Health Facility to the date he filed this application on 25/3/2021 before this court? Surely, no

explanation on those pinpointed dates. Also, it is not known when the applicant supplied with intended impugn judgment of this court.

In fact, I am aware that in our jurisdiction it is trite law that each day of delay must be accounted for and must not be inordinate without negligence or apathy or sloppiness in prosecuting the intended action. See **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of the Young Women Christian Association of Tanzania** (Civil Application No 2 of 2010) [2011] TZCA whereby the Court formulated the following guidelines:

- "(a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."*

As to the present application, the applicant has failed to account from 5/10/2021 to 21/10/2021 and also from 29/10/2021 to 25/3/2022 when he filed this application. Even if, I take the date the applicant started feeling well, that is on 13/12/2021 to the date he filled this application that is on 25/3/2022 still, there are no reason advanced for the delay to lodge this application. In fact, the days unaccounted are so many to the extent that it makes his delay ordinate and with great sense of negligence

or apathy or sloppiness in taking the action to prosecute this matter. Therefore, basing on the above observation, I am of the settled finding that the applicant has not advanced any sufficient reason for his delay since he left a big number of days of delay unaccounted. Bad enough the applicant's affidavit has not featured any point of law or illegality featuring the intended impugn judgment which may move this court to grant his application.

In the upshot, it for the above reasons that I dismiss this application without costs. Each party to bear their own costs.

It is so ordered.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E. I. Laltaika".

JUDGE

5.7.2022

This ruling is delivered under my hand and the seal of this Court on this 5th day of July, 2022 in the presence of the applicant and the second, third and fourth respondents who have appeared in person and unrepresented and in absence of the first respondent.

Right of Appeal to the Court of Appeal explained.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E. I. Laltaika".

JUDGE

5.7.2022