

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT DODOMA

MISCELLANEOUS CIVIL APPLICATION NO. 30 OF 2021

(Originating from Probate and Administration Cause No. 1/2009 and from Resident Magistrate's Court of Singida at Singida in Misc. Civil Application No. 12/2020)

KHALIFA SHABANI.....APPLICANT

VERSUS

ZENA MOHAMEDI.....RESPONDENT

RULING

26/05/2022 & 21/06/2022

KAGOMBA, J

The application before this Court has been filed by Khalifa Shabani (henceforth "the applicant") under section 14(1) and section 19(2) of the Law of Limitation Act, [Cap 89 R.E 2019] seeking extension of time within which to file his appeal out of time. He intends to challenge the decision of the Resident Magistrate Court of Singida at Singida in Misc. Civil Application No. 12 of 2020. The application is supported by an affidavit of the applicant. The Respondent is Zena Mohamed, who also filed a Counter Affidavit to oppose the application.

In his affidavit, the applicant avers that being dissatisfied with the aforesaid decision of the Resident Magistrate's Court, he applied for certified

copies of the decision but felt sick in the process. He submitted medical chits to support his argument.

The respondent in her counter affidavit found no merit in what is averred by the applicant in his affidavit. She said that the applicant has not stated when the impugned decision was delivered, when he applied for certified copies of its decision or when he was supplied with the same. She also faults the affidavit for being silent as to when the applicant was sick and for how long.

During hearing of the application, the applicant fended for himself, without legal representation, while the respondent enjoyed the service of Mr. Francis Kesanta, learned advocate. The submission of the applicant was by and large in line with what he averred in his affidavit, except for additional explanation on the extent of his sickness. He said he was so sick that he had to undergo a major surgical operation on his stomach. He said that after the operation, he continued receiving treatment until when he felt he was in better health, that is when he filed this application.

Mr. Francis Kesanta, opposed the application consistent with the respondent's counter affidavit. He lamented that the applicant had served the respondent with a chamber summons without attaching the medical chits and the ruling of the Resident Magistrate's court which he was challenging. He said from the date of the impugned ruling, i.e on 21/9/2020, up to the date when the applicant went to hospital about 20 days passed, but the applicant has not justified that passage of time.

Mr. Kesanta further submitted that while the hospital records show that the applicant was discharged on 19/10/2020, he still delayed to file his application until 23/7/2021, being a period of about six (6) months, without accounting for each day of delay in his affidavit.

In his rejoinder, the applicant told the court that his sickness began sometimes before the ruling was delivered, and that the date he was admitted in hospital was not the beginning but the climax of his pains. He said after undergoing that major operation, he was still sick as the operation was not well performed. Hence, he had to go back to hospital over and over again. To make any doubting Thomas believe him, the applicant unwittingly pulled up his shirt to display a large scarring scar on his stomach which appears to have resulted from nothing but a major surgical operation, to the shock of the court. The applicant did so without any prior leave of the court, but the evidence on his sickness was clearly adduced.

The applicant further stated that, he is claiming for his right which had been denied for long time, adding that due to his old age, he could not recover quickly. He told the court that he is seventy-three years (73) old. He said that since he has a right to file his appeal out of time, that is why he filed this application for extension of time.

Having heard the rival submissions by both parties, the issue for determination by the court is whether or not the applicant has assigned sufficient cause for his application to be granted. In **Munello V. Bank of Tanzania** [2006] EA 227, it was stated that what amount to sufficient cause has not been defined but a number of factors have to be put into account,

including whether or not the application has been brought promptly, absence (if any) of valid explanation for delays or lack of diligence on part of the applicant.

In determining the sole issue in this application, the court is mindful of the legal principle that every case has to be decided on its own facts. In this application the reason for the applicant's delay to file his appeal in time has been stated to be his sickness. The applicant has told the court that his sickness began before the date of the impugned ruling of the Resident Magistrate's Court on 21/9/2020 and that the pains became unbearable thereafter where it was necessary for him to undergo a major stomach operation.

The medical chit attached to the affidavit shows that the applicant was admitted in hospital on 12/10/2020 and was discharged on 19/10/2020. He was therefore admitted about 21 days from the date of the ruling. The applicant has told the court that he is 73 years old. Indeed, he looks even older than that. For a man of his age, recovery from that major operation is not expected to be quick. This sufficiently explains why the applicant was inactive during the period after the ruling was delivered.

Further, the medical chit shows that the applicant was given specific instructions upon discharge, to continue with medication and to return to hospital for follow up. the chit also shows that the applicant was attending hospital at least for two more times.

Court records shows that after filing his application on 23/7/2021, the applicant was entering appearance in court every time the case was called for mention or hearing, without missing. To be precise, he has entered appearance six consecutive times up to the date of hearing. This demonstrates his zeal and seriousness to prosecute his application, and eventually his appeal, subject to granting extension of time to file the same.

Mr. Kesanta has faulted the chamber summons for not specifically mentioning which decision the applicant intends to appeal against. I agree with him. There is such an irregularity in the chamber summons. However, I don't take it to be fatal in view of the fact that the chamber summons mentions where the application originates from, and more so the supporting affidavit has clearly disclosed the specific decision the applicant intends to challenge. In any case, no injustice has been occasioned to the respondent from that cited irregularity.

Mr. Kesanta also complained that the respondent was served with applicant's chamber summons to which the medical chit was not attached. If that is what happened, it was wrong for the applicant to do so. A fair hearing presupposes that an opposite party is not taken by surprises as to what the other party's case is all about. I am contented however, by the fact that eventually Mr. Kesanta was availed with a copy of the medical chit, which was a two-page document with not much details, and did made good use of it to challenge the application.

That said, there is one more aspect of this application that I need to clarify. In **the Registered Trustees of the Archdiocese of Dar es**

Salaam V. The Chairman Bunju Village Government & 11 Others,
Civil Appeal NO. 147 of 2006 page 9, courts are cautioned to avoid the danger of being led away by sympathy in application for extension of time like this one.

I have said earlier that the applicant showed this court a scarring scar from a major surgical operation on his stomach. The fact that the applicant who is 73 years old underwent such a life-threatening operation could, no doubt, draw sympathy from any life-loving person. However, the bottom line is that the applicant was able to substantiate the gravity of his sickness to the satisfaction of the court. He appears to have endured a life-threatening illness. In the circumstances, to demand the applicant to account for each day of delay, is to try to ignore the truth of human life. There are times in human life when nothing else matters except life itself. It is for existence of such peculiar situations, a legal principle evolves that each case has to be determined on its very own facts.

Having stated what I have stated, I am of a firm view that there is sufficient cause for granting this application and the same is hereby granted accordingly. The applicant has thirty (30) days from the date hereof to file his appeal. Cost to follow event. Ordered accordingly.

Dated at Dodoma this 21st day of June, 2022.



ABDI S. KAGOMBA
JUDGE