

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPL. NO. 35 OF 2021

(C/F Land Application No. 22 of 2018 in the District Land and Housing Tribunal for Karatu at
Karatu)

MITALAMI LOTI SANGALAI.....APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF FREE PENTECOSTAL

CHURCH OF TANZANIA.....RESPONDENT

RULING

19/05/2022 & 15/07/2022

GWAE, J

The[applicant, Mitalami Loti Shangalai is before this Court is seeking an order of the court extending time within which to file his appeal out of time against the decision of the District Land and Housing Tribunal (Tribunal) in Application No. 22 of 2018. The application was supported by a sworn affidavit of the applicant himself. On the other hand, the respondent filed Counter affidavit protesting the application.

Hearing of this application was by way of written submission, while the applicant was unrepresented, the respondent on the other hand enjoyed legal services from Fortis Attorneys.

Supporting the application, the applicant submitted that the delay was a result of his illness. He went on stating that he has been suffering from irregular heart beat and for a number of days between 17th August 2020 to 19th March 2021 he was hospitalized at Brown Medical Center and on those mentioned dates he was required to attend to hospital for checkup. For this reason, the applicant stated that he was unable to appear before the tribunal when the judgment was delivered until 12th April 2021 when he was able to request the copies of judgment and proceedings.

Another reason for the delay advanced by the applicant was that he was facing financial constraints. Amplifying this reason, the applicant stated that he is a widower aged 86 years and has no any reliable source of income, thus at the time the judgment was delivered he was sick and even when he got better, he wanted to appeal and therefore he had to look for an advocate for legal assistance. However due to his financial constrains he was unable to engage an advocate on time, and it was until 12th May 2021 when he was

able to sell some of his properties and therefore got some money to instruct his advocate.

In furtherance of his arguments the applicant also stated that, he is aware that financial constraints are not sufficient ground for extension of time however in some circumstances it has to be considered as a sufficient reason. Supporting this argument, the applicant cited the case of **Yusufu Same and another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002 (Unreported)

The respondent on the other hand strongly opposed the reasons advanced by the applicant and stated as follows;

As to the first reason advanced by the applicant, it was the reply of the respondent that the applicant in the first place was not admitted at the hospital as he was out patient and therefore, he was not seriously sick. Moreover, the applicant had relatives and children who were aware of the case including his son who was part to the suit at the tribunal named Obote Mitalami Loti who could have informed his father what has been transpiring at the tribunal. Above all, the applicant was also represented by an advocate

at the tribunal thus it was also easy to get information with regard to his case through his counsel.

Cementing on the issue of sickness as a sufficient reason for extension of time, it was the further submission of the respondent that in many occasions this Court has held that for illness to stand as a ground for extension of time one has to show clearly how the said illness contributed to the delay. Supporting this argument, the respondent cited the decision of the Court of Appeal in the case of **Juto Ally vs Lukas Komba and Aloyce Msafiri**, Civil Application No. 484/17 of 2019 (Unreported)

As to the reason that the applicant was facing financial constraints, the respondent submitted that if at all the applicant had some properties to sell in order to engage an advocate he would have done so in the very beginning, nevertheless the respondent also stated that the applicant even in this appeal is not represented.

Submitting further against the application the respondent stated that it has been held in many cases that financial constraints is not a good and sufficient reason for extension of time. The respondent cited the case of

Constantine Victor John vs Muhimbili National Hospital, Civil
Application No. 244/18 of 2020 (Unreported).

Lastly, the respondent opposed the application by stating that the applicant has failed to account for every day of delay and therefore prayed for the dismissal of the application.

In his short rejoinder, the applicant stated that even though he was an outpatient but he was seriously sick. Admittedly, the applicant stated even it is true that his son was a party in the suit at the tribunal however, it was unfortunate that at the time of the delivery of the judgment his son was arrested and was kept in the custody for almost two weeks, thus by the time he was released he was unaware that the judgment had already been delivered. The applicant went on stating that his advocate who is now deceased, was also sick and therefore he could not make follow up on the case. Finally, the applicant prayed for the court's order grant this application.

Having summarized the parties' submissions above, it is now time for the determination of the application, and the main issue to be considered is whether the applicant has given sufficient reasons to enable this court to

exercise its discretionary powers to grant the relief sought. It was held in the case of **Livingstone Silay Haru v. Collifred Temu** [2002] TLR 268, that:

"It is discretion on the part of the court to grant the extension of time depending on sufficient reason being given to explain the delay".

From the records, the applicant has demonstrated three main reasons to be considered by this court as sufficient reasons, these are; sickness, financial constraints and illegality.

To begin with sickness as a sufficient reason for extension of time. The applicant has explained in his affidavit that he was prevented to file his appeal on time as he was hospitalized at Brown Medical Center from 17th August 2020 to 19th March 2021. On the other hand, the decision intended to be appealed was delivered on 11th December 2020 whereas this application has been filed on 28th May 2021. In his application, the applicant has also attached a medical chit showing his regular attendances to the said Center. Much as sickness can be a good ground for extension of time, nevertheless I am subscribed by the case cited by the respondent's counsel where the Court of Appeal of Tanzania in the case of **Juto Ally vs Lukas**

Komba & another, Civil Application No. 484/17 of 2019 (Unreported)

Wambali J. A. had the following to say;

"I thus reject her argument in the first ground that she failed to serve them because she was sick and lacked financial means to engage an advocate to initiate the appeal processes during the respective period. Indeed, she has not explained how her illness contributed to the delay as the medical evidence she attached to her affidavit concerns the period specifically for the dates when she attended to hospital on 8th October, 2016 and 19th June, 2016. Besides, there is no indication that on those particular dates she was admitted and for how long. The only indication is that she attended at Mwananyamala Hospital as an outpatient where she was attended and allowed to go to her residence on both occasions."

The above authority has said it all. In the particular case the medical chit attached only shows the dates to which the applicant attended to the center as an outpatient and there is no indication that the applicant was admitted. Moreover, I have also observed the interval of the dates on which the applicant was attending medication, it is for obvious reasons that, the applicant was not attending to the hospital in all days, therefore the applicant would be able to make a follow up of his case on those days which he was not attending to the hospital.

I am aware that sickness is a condition which is experienced by the person who is sick and that it is not a shared experience except for a sick person who is in a position to express her/his feelings. See the decision of the Court of Appeal of Tanzania in the case of **John David Kashekya vs The Attorney General**, Civil Application No. 1 of 2012 (Unreported). However, under the circumstances of this case even if this court is to assume that the applicant was sick the evidence does not indicate that he was unconscious and unable to do any work. Therefore, this suggests that the applicant even though he was sick but yet he was aware that he had a pending case at the District Land and Housing Tribunal and if at all he was unable to attend or as he alluded that his son who was also a party to the case was arrested at the time of delivering of the judgment and that his counsel was also sick, yet this court is of the considered view that, the applicant had an avenue of sending a person/relative to make a follow up of his case.

In this regard, I am of the firm view that the reason of sickness advanced by the applicant is insufficient as it has not been well established as to how it prevented the applicant from making a follow up of his case and

consequently made him delay to file his appeal on time since it is evidently clear that he was not admitted.

Similarly, the applicant's reason of financial constraints, appears also to be insufficient reason as the case of **Juto Ally vs Lukas Komba & another**, cited above the Court of Appeal of Tanzania has already laid a principal that lack of financial means is not a sufficient reason for extension of time unless under very special circumstances for instance where the applicant is a widow / widower and is under legal aid See the decision of the Court of Appeal of Tanzania in the case of **Yusufu Same and Another v. Hadija Yusufu**, Civil Appeal No. 1 2002 (unreported). In our case the applicant has pleaded to be sick, and a widower and that he had no money to engage an advocate until when he sold his properties, however, it should be remembered that the applicant at the trial tribunal was represented by an advocate, therefore his plea of financial difficulty is, for that reason found to be baseless.

The applicant has also argued that there are points of illegalities in the decision intended to be appealed against. There are several decisions of this court and those of the Court of Appeal of Tanzania, which considered this issue, where the ground of illegality of the impugned decision is raised.

In **VIP Engineering and Marketing Limited and Two Others VS. Citibank Tanzania Limited**, Consolidated Civil Reference No.6, 7 and 8 of 2006 (unreported) it was held:

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (now Rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay."

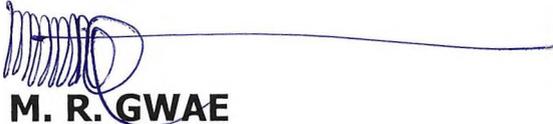
However, it is worth noting that, in the cases where illegality was considered as a ground for an extension of time the said illegalities were demonstrated and apparent. **Korosso J. A** in the case of **Finca (T) Limited & another vs Boniface Mwalukisa**, Civil Application No. 589/12/2018 had the following to say;

"It is, however, significant to note that the issue of consideration of illegality when determining whether or not to extend time is well settled and it should be borne in mind that, in those cases where extension of time was granted upon being satisfied that there was illegality, the illegalities were explained."

Adhering and applying the above position of the law in relation to the application at hand the applicant has only stated that the decision which is intended to be appealed against contains illegalities and irregularities without explaining the said illegalities. In this regard, this court is not persuaded that the alleged illegality is apparent on the face of the record which can justify this court to consider it or them as a good cause for the Court to grant the prayer sought in this application.

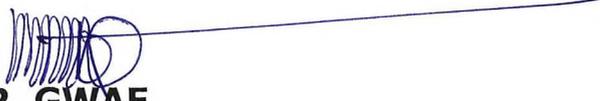
In the event, I unhesitatingly find that, the applicant has failed to illustrate good cause that would entitle him an order extending time as sought. This application is consequently dismissed with costs.

It is so ordered.


M. R. GWAE
JUDGE
15/07/2022

Court: Right of appeal fully explained




M. R. GWAE
JUDGE
15/07/2022