

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

MISC APPLICATION NO.99 OF 2021

(C/f Land Application No.2 of 2021 at the District Land and Housing Tribunal for Kiteto District at Kibaya)

VICENT LAIZERAPPLICANT

Vrs

THE REGISTERED TRUSTEES OF THE CATHOLIC

CHURCH ARCHDIOCESE OF ARUSHARESPONDENT

RULING

Date of last Order: 13-6-2022

Date of Ruling: 6-7-2022

B.K.PHILLIP,J

This application is made under section 14 (1) of the law of Limitation Act. The applicant is praying for the following order;

- i) That the Honourable Court be pleased to grant leave for extension of time for the applicant to appeal out of time against the decision of the District Land and Housing Tribunal for Kiteto at Kibaya in Land Application No.2.of 2021.

The application is supported by an affidavit sworn by applicant. The respondent's principle officer, one Abigael Charles swore a Counter affidavit in opposition to the application. The learned Advocates Paschal Peter and Pastor Kang'oke appeared for the applicant and the respondent respectively. I ordered the application to be disposed of by way of written submissions.

Mr. Peter's submission was as follows; That the judgement of the Land and Housing Tribunal (Henceforth "the Land Tribunal) was delivered on 29th July 2021. On 3rd August 2021, the applicant fell sick and was admitted in Hospital at Kiteto Hospital up to 30th September 2021. Thereafter, he continued to be under lock down and medication up to 21st November 2021. Consequently, the applicant was not able to lodge his appeal against the decision of the Land Tribunal in time. Mr. Peter contended that the applicant's failure to lodge his appeal in time was caused by problems which were beyond his control. There is no any negligence on part of the applicant since immediately after his recovery he took the necessary steps and filed this application. Mr. Peter implored this Court to exercise its discretion in favour of the applicant by granting this application.

In rebuttal Mr. Pastor argued that the documents attached to the affidavit in support of this application show that the treatment which were given to the applicant were just at initial stage and the applicant was not admitted at Kiteto District hospital. The letter from the Hospital shows that the applicant was just advised to avoid extraneous exercise. He contended that the filing an appeal is not an extraneous exercise. The applicant has neither shown any good cause for delay in filing his appeal nor explained how the alleged sickness contributed to his failure to file the appeal in time. To cement his arguments he cited the case of **Shembilu Shefaya Vs Omary Ally (1992) TLR 245** in which the of Appeal dismissed an application for extension of time and had this to say;

" The applicant has come to this Court with the same prayer for extending time to file a notice of appeal. His affidavit in support of this application does not provide the

elaboration which was wanting before Mushi, J. Even at the hearing he merely insisted that the disease he had was not one for Hospital treatment and that the local doctors could not be available to bear witness to that fact. Now, as properly pointed out by the respondent in his Counter affidavit, that could be alleged by anybody with impunity. For Court work we need something more than excuses."

Moreover, Mr. Pastor argued that the applicant has been negligent in handling this case and filed this application as an afterthought after being served with the application for execution of the order of the Land Tribunal. He contended that for an application for extension of time to be granted by the Court, the applicant has to account for each day of delay. He cited the case of **Mega Builders Limited Vs DPI Simba Limited, Civil Application 319/16 of 2020**, (unreported) in which the Court held as follows;

".. It is settled position that in applications for extension of time, the applicant must account for every day of delay"

Moreover, Mr. Pastor submitted that in this application the applicant has not accounted for the period between 29th July 2021 when the judgment of the Land Tribunal was delivered to 3rd August 2021. And has not said anything for the period of delay between 3rd of August to 21st November 2021 when this application was filed in this Court.

In addition, Mr. Pastor submitted that the Decree of the Land Tribunal has been executed. He was of the view that since execution has already been completed this application is overtaken by events. He invited this Court to dismiss this application.

I have taken into considerations the submissions made by both learned Advocates as well as perused the court's records thoroughly. First of all , I join hands with Mr. Pastor on the position of law that is, in an application for extension of time the applicant is obliged to account for each day of delay by giving sufficient cause for the delay. This is in line with the decision of the Court of Appeal in the case of in the case of **Hassan Bushiri vs Latifa Lukio Mashao, Civil Application No.3 of 2007** (unreported) in which it held as follows;

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

What amounts to sufficient cause is subjective. It depends on the circumstances of each case. However, our Courts have established some guide lines which are normally taken into account in the determination on whether the reasons adduced by the applicant are sufficient causes for the delay. In the case of **Tanga Cement Co. Ltd Vs Jumanne D. Masangwa and another , TAG Civil Application No.6 of 2001** (unreported) the Court of Appeal said the following;

" What amounts to sufficient cause has not been defined. From decided cases, a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence part of the applicant.."

Back, to the application in hand. The impugned decision was delivered on 29th July 2021 and this application was filed on 22nd November 2021. Therefore the applicant herein has to account for the delay of more than 100 days. I have perused the documents attached to the affidavit in

support of this application, the same do not indicate that the applicant was admitted at Kiteto District Hospital. To the contrary, they indicate that the applicant was receiving treatment at home. This is a contradiction to what is deponed by the applicant in his affidavit . In fact, the applicant's assertion that he was under intensive treatment is not reflected in the documents annexed to his affidavit. As correctly, submitted by Mr. Pastor, the attached documents show that the applicant was advised not to engage himself in extraneous exercise. I entirely agree with Pastor that filing an appeal cannot be termed as "an extraneous exercise".

In addition to the above, Mr. Peter's submission that from 30th September 2021 to 21st November 2021 the applicant was under lock down is not true because the affidavit in support of this application shows that it was sworn by the applicant on 7th of November 2021 before advocate Jackson Kisaka. As stated by the Court of Appeal in the case of **Shembilu Shefaya** (supra) for Court work we need something more than excuses. That is, there should be sufficient, truthful and honesty explanations which connect the alleged sickness to the delay in taking the required legal action.

Moreover, I am inclined to agree with the assertion made by the respondent's principle officer in his Counter affidavit that this application has been filed as an afterthought after the applicant being served with the application for execution of the Order of the Land Tribunal because this application was filed together with a certificate of urgency in which the applicant stated that the application is of extreme urgency since the respondent has filed an application for execution of the Decree of the

Land Tribunal. He annexed the respondent's application for execution in his certificate of urgency. To say the least, the applicant's assertion are contradictory, hence doubtful. It has to be remembered that he who comes to equity has to come with clean hands. [See the case of **Mikali Abduel Msuya and another Vs KBM-Sons & Company Limited and Three others , Misc. Land Application No.719 of 2020** (unreported)].

In the final analysis it is the finding of this Court that the applicant has failed to account for each day of delay as required by the law. Consequently, this application is dismissed with costs.

Dated 6th day of July 2022



A handwritten signature in black ink, appearing to read "B.K. Phillip", is written over the printed name.

B.K.PHILLIP

JUDGE