

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IN THE DISTRICT REGISTRY)**  
**AT MWANZA**

**Misc. APPLICATION NO. 29 OF 2022**

*(Arising from the decision of District Land and Housing Tribunal for Geita at Geita in  
Misc. Application No. 72 of 2020)*

**DANIEL PETRO----- APPLICANT**

**VERSUS**

**JUMA FUNGAMTAMA----- RESPONDENT**

**RULING**

*Last Order: 12.07.2022*

*Ruling Date: 21.07.2022*

**M. MNYUKWA, J.**

The applicant herein has moved this court under section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019, praying this court to extend time, for which he can appeal to this court, cost of the suit and, any other orders that this court see fit and just to grant. The application was supported by an affidavit sworn by DANIEL PETRO, the applicant. The application was contested by the respondent through a counter affidavit sworn in by JUMA FUNGAMTAMA the respondent herein.



During the hearing of this application, both parties appeared in person, unrepresented and the application was argued orally.

In his submissions, the applicant started by adopting his affidavit to form part of his submissions. He further submitted that, he failed to appeal within the prescribed time because he was sick and that he was treated by a traditional doctor. He went on that, after getting relief he decided to lodge this application for the court to grant an extension of time so that he can file his appeal out of time.

Replying, the respondent also adopted his counter affidavit filed in this court on 08/07/2022 to form part of his submissions. He went on to submit that, the applicant failed to support his reason that he was sick with either a document or even a statement to show where he was treated. He added that, the applicant is his neighbour, and he was not sick as he did not state where he got the traditional treatment therefore the applicant's assertion carries no weight for the application to be granted.

In his rejoinder, the applicant reiterates what he had submitted in his submission in chief and added that he is not a liar as he got the treatment from the traditional healer. And that's were all from both parties' submission.



From the parties' submissions, and their respective affidavit and counter affidavit, I now have one issue for determination which is whether this application is merited.

The application before me is for the extension of time, a prayer by the applicant, who wishes to appeal to this court out of time against the decision of the District Land and Housing Tribunal. Granting extension of time is within court's discretion whether to extend time or not. However, this discretion should be exercised judiciously as the court must be guided by the principle including whether the applicant has advanced good cause for the court to consider his application as provided for under section 14(1) of the Law of Limitation Act Cap 89 R.E 2019. Along the good cause, the applicant is required to account for each day of delay.

I am aware that the term good cause has not been defined under the law and therefore, each case has to be determined in accordance with its own facts and circumstances surrounding it. This was also said in the case of **Jacob Shija vs M/S Regent Food & Drinks Limited & Another** Civil Application No. 440/08 of 2017, where the Court of Appeal at Mwanza held that;

*"What amounts to good cause cannot be laid by any hard and fast rules but are dependent upon the facts obtained in each particular case. That is, each case will be*



*decided on its own merits, of course taking into consideration the questions, inter alia, whether the application for extension of time has been promptly, whether every delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant."*

In the instant application, the applicant submitted that he failed to appeal on time as he was sick. His reason for sickness was strongly refuted by the respondent who submitted that the applicant failed to prove his sickness allegation since he failed to prove that he was treated.

From the filed affidavit, apart from accounting for each day of delay by the applicant, the 19<sup>th</sup> paragraph raised an issue of illegality. That, his appeal has chances of success as there is a point of law to be determined by the court that, the respondent sued the wrong party as he was not the administrator of the deceased's state.

It is settled position of the law that illegality is one of the reasons for the extension of time. However, the point of illegality raised must be apparent on the face of the record. This was the position of the Court of Appeal in the case of **Jeremia Mugonya Eyembe vs Hamis Selemani**, Civil application No. 440/08 of 2020 Where the Court of Appeal stated that;



*"Admittedly, illegality or otherwise in the impugned decision can by itself constitute sufficient ground for an extension of time. This is in accordance with the principle in **the Principal Secretary Ministry of Defence and National Security vs Devram Valambia**, (1992) TLR 185. However, for illegality to be the basis for grant, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of the appellate court."*

From the available records, the applicant's affidavit reveals that, the respondent successful instituted Land Application No. 01/2020 before Ngoma Ward Tribunal seeking a declaration order to be a lawful owner of the piece of land measured 4.5 hectares. The matter was determined ex-parte and the respondent was declared a winner. The respondent further sought to execute his Decree through Misc. Land Application No. 72/2020 before the District Land and Housing Tribunal of Geita at Geita, in which the decision was delivered in favour of the respondent. The applicant instituted Misc. Land Application No. 72 A/2020 seeking for an order of stay of execution, and at the same time he was seeking an extension of time to appeal out of time. The Tribunal dismissed his application for stay of execution and allowed execution to take place.

On the trial tribunal records, specifically on the Ruling delivered in respect of Misc. Application Na. 72 "A"/2020, I did not find the said



illegality which alleged to be on the issue of suing the wrong party to be raised or determined. The applicant in his affidavit raised the issue of illegality which is the point of law that the respondent sued the wrong person as he is not the administrator of the deceased's estate. However, the Ruling referred to by the applicant, determined the issue as to whether the applicant had advanced sufficient reason for the tribunal to stay the execution. Further there was no point where the applicant raised that he was wrongly sued for the Tribunal to determine the same.

To that end, I agree with the respondent's reply in paragraph 15<sup>th</sup> of his reply to the affidavit that, the issue of illegality raised by the applicant is an afterthought, as there is no indication that there is any irregularity from the lower court's decisions. Thus, this ground of illegality is baseless and cannot be considered in the present application as a reason for extension of time as it is not apparent seen on the on the face of the records.

Moving on, I will now determine if the applicant has given sufficient reason for his delay. From the applicant's submission together with his affidavit, the applicant has given the reason of sickness. Paragraph 6,7,8,9,14 and 15 of the applicant's affidavit states that he was sick in different times. The applicant avers that he was treated by a traditional healer and he has no certificate to prove the same. The respondent



contested the same and states that the applicant is his neighbour and he was not sick. He further demanded that; the applicant must have an affidavit from the traditional healer to prove the same.

It is true that sickness is beyond human control and it is a good reason for extension of time as it was stated in the case of **Alasai Josiah (suing by his attorney Oscar Sawuka) vs Lotus Valley Ltd**, Civil Appeal No. 498/12 of 2019 CAT at Dar es salaam. However, the applicant must be in a position to prove that he was sick and attending medical attention, hence his failure to appeal within time. I agree with the respondent's submission that, the applicant has failed to exhibit that he was sick and was treated by the traditional healer. I am aware that, there are traditional healers who are registered to administer traditional medicine. However, the applicant has failed to prove that, he was treated by a traditional healer, as there is no certificate to that end or his affirmation to the same.

Further, at the time this application was filed, the applicant has delayed for more than a year from the date when the impugned Ruling was delivered, to the time when this application was filed. And apart from the reason that he was sick for almost 6 months, in which he failed to prove, no explanation for the days he delayed which does not fall to the days he claims that he was sick.



For that reason, the applicant has failed to give reasons for his delay and consequently, failed to account for each day of delay. For the aforesaid reason, this court cannot exercise its discretion to grant extension of time to the applicant. In the final result, I find the Misc. Land Application No. 29 of 2022 is devoid of merit, and it is hereby dismissed with costs.

It is so ordered.



**M. MNYUKWA**  
**JUDGE**  
**21/07/2022**

**Court:** Ruling delivered in the presence of both parties.

**M. MNYUKWA**  
**JUDGE**  
**21/07/2022**