

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

MISC. CIVIL APPLICATION No. 96 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal of
Mwanza at Mwanza in Application No.768 of 2017)*

LUGWISHA MWINAMILA (Administrator of the
Estate of the Late Mwinamila Shiduku)**APPLICANT**

VERSUS

SANDA MNADA.....1st **RESPONDENT**
LYETO UBANGA..... 2nd **RESPONDENT**
MASUNGA BALOLE.....3rd **RESPONDENT**

RULING

Last Order date: 7.06.2022
Ruling Date: 21.07.2022

M. MNYUKWA, J.

By way of chamber summons, the applicant Lugwisha Mwinamila, who is the administrator of the estate of the late Mwinamila Shiduku applied to this court for an order to extend time to file an appeal to this court out of time, from the decision of the District and Land Housing

Tribunal for Mwanza at Mwanza (the trial tribunal) in Land Application No. 768 of 2017 delivered on 18/06/2021, that was dismissed with costs.

The present application is preferred to this court under section 41(2) of the Land Disputes Courts Act, Cap 216 [Re: 2019] supported by the affidavit sworn by Lugwisha Mwinamila, the applicant.

The brief background of the matter is that, the applicant instituted the Land Application before the trial tribunal, claiming his piece of land to be trespassed by the respondents without his consent. He, therefore, prayed before the trial tribunal for the following reliefs; a declaration that the applicant is the lawful owner of the disputed land, that the trial tribunal should issue a permanent injunction to the respondents and his agents from entering or doing anything in the disputed land, costs of the suit to be borne by the respondents and any other relief that the trial tribunal may deem fit and just to grant.

After hearing both parties to the case, the trial tribunal decided the matter in favour of the 1st respondent by declaring him the lawful owner of the disputed land. The applicant did not appeal against the decision of the trial tribunal in the prescribed time required by the law hence the present application.



When the matter came for hearing, the applicant was represented by Frank Obedi Kabula, learned counsel while the 1st and 3rd respondents appeared in person, unrepresented and the court ordered the matter to proceed ex-parte against the 2nd respondent as he did not enter appearance. By the consent of the parties and with the leave of the court, the hearing was done by way of written submissions. I thank parties to the case for complying with the orders of the court in regard to filing of their submission on time.

In his submission in chief, first of all, the applicant prayed to adopt his affidavit to form part of his submissions. In his affidavit, as reflected on paragraphs 4, 5 and 6, the main reason for delay to file the appeal within time was due to sickness. The applicant averred that, as he was aggrieved by the decision of the trial tribunal, he was in the process of appealing against the said decision. In the process of appealing, he fell sick and he was attended at Nyamagana District Hospital where it was discovered that he was suffering from generalized body weakness and heartbeat awareness that was associated with lower limb edema. That, the illness was serious which compelled him to undergo local treatment of the lower limb, after obtaining an introductory letter from Ishokela cell leader in Buhunda village authorizing him to be accepted to receive traditional treatment in other places. To fortify his assertion, the applicant



attached a copy of the medical chit from Nyamagana District Hospital and a copy of the introductory letter issued by Ishokela cell leader.

In his submission, the applicant went on that, due to illness, the applicant was unable to walk and therefore could not be able to proceed with the appeal until when he recovered in October 2021.

He retires his submission by insisting that, the applicant's delay to file the appeal within time was beyond his control as he was sick and that sickness is a sufficient cause for this court to grant this application so as to be afforded his constitutional right of being heard. He supported his argument by referring to the case of **Richard Mlagala & Others v Aikael Minja & Others**, Civil Application No 160 of 2015 [2015] TZCA 260 (10 December 2015).

Responding to the applicant's submissions, the 1st and 3rd respondents opposed the application through their respective replies to the affidavit and filed joint written submissions praying this court to dismiss the applicant's application with costs. They attacked the applicant's submission by averring that, after the trial tribunal's decision being delivered, the applicant disregarded it and he started to develop the suit land against the lawful orders of the tribunal. That, the applicant brought the present application on 14th October 2021 as a delaying tactic



after being served with the application for execution filed by the 1st respondent on 5th October 2021.

They went on to oppose sickness as a reason which prevented him to appeal within time as they averred that, the records are silent if the applicant was sick and attended treatment in July 2021 as the only document to evidence that he was sick, is the document dated 12th October 2021.

They went further to submit that, for this court to exercise its discretionary power to grant extension of time as stated in the case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the following criterias should be met by the applicant; account for all period of delay, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, the applicant must show if there is any illegality in the decision and the delay should not be inordinate.

They added that, the applicant failed to account for each day of delay on 119 days of delay, to advance good cause for delay and to show if there is any illegality in the decision intended to be challenged in the appeal and therefore prays for this application to be dismissed. They

conclude by supporting their argument with the case of **Golden Crescent Assurance vs Yusta Ezekiel Njau**, Misc. Civil Application No 1 of 2020 as the application was dismissed for the applicant's failure to account for 29 days of delay.

Rejoining, the applicant kept insisting that, he delayed to file his appeal due to sickness and added that its not true that he went to the hospital only a day, as he was on bed for three months as evidenced by the letter from Nyamagana Hospital that was attached. He further reiterates his submission on chief.

I have given careful consideration to the arguments for and against this application advanced by the applicant as well as the respondents, I find the central issue for consideration and determination is whether sufficient reason has been advanced to warrant the extension of time sought by the applicant.

It is an established principle of law that the decision to grant or not grant an order of extension of time is within court's discretion and that discretion should be exercised judiciously and supported by logical, valid, authentic and sound reasoning as it all depends upon a party seeking an order to adduce sufficient reason(s) that prevented him from doing what he was supposed to do within time. There is a surfeit of legal authorities

in this respect. In the case of **Benedict Mumelo vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, the Court of Appeal of Tanzania decisively held;

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

I have revisited the applicant's affidavit and going through into his submissions to find out what transpires to this application. Going to the records, I find this application is filed on 15th October 2021 while the decision sought to be challenged was delivered on 18th June 2021.

It is a requirement of the law that any person aggrieved by the decision of the trial tribunal his appeal shall be heard by the High Court as it is provided for under section 41(1) of the Land Disputes Courts Act, Cap 216 R.E 2019, and he has to file his appeal within 45 days after the date of the decision or order, and if for reasons to be accepted by the court, may apply for an extension of time after the expiration of forty-five days. Section 41(2) of the Land Disputes Courts Act, Cap 216 [RE: 2019] reads: -



"An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

*Provided that, **the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.**" (Emphasis is mine on the bolded words)*

In the application at hand, the applicant's application is mainly based on his affidavit as shown in paragraphs 4, 5 and 6. Let the applicant speak for himself as gleaned from his affidavit which I hereby reproduce:

*4. That, in the process of finding a lawyer who could assist him to prepare necessary document, on 20th July 2021 the applicant while in Buhongwa fell sick and he attended at Nyamagana District Hospital where it was discovered that he was suffering from generalized body weakness, heart beat awareness that was associated with lower limb edema. **A copy of recommendation letter from Nyamagana District Hospital is hereby attached and marked as Annexure "LU-1."***

5. That, I applicant could do nothing since he was not capable of walking due to lower limb edema and was still under Treatment at Nyamagana District Hospital and it was mandatory to undergo a check-up.

6. That, the said illness was serious in a sense while continuing using medicine obtained from the hospital on 5th August 2021, I decided to undertake local treatment of the lower limb whereby he obtained an introductory



*letter from Ishokela cell leader in Buhunda village allowing him so as to be accepted for local treatment in other places. **A copy of the introductory letter issued by Ishokela Cell leader is hereby attached and marked as Annexure "LU-2."***

Upon going through the available court record, I find what is claimed by the applicant as a proof of sickness is a copy of a letter from Nyamagana District Hospital together with the payment receipt of consultation service dated 12th October 2021 and an introductory letter dated 5th August 2021 from the Chairman of the small village of Ishokela.

Upon careful scrutiny of the applicant's application, I have had time to calculate the number of days delayed by the applicant to file his appeal to this court. As per the records, the decision was delivered on 18/06/2021 and the applicant was supposed to file an appeal on or before 2nd August 2021. For the reason advanced by the applicant that he was sick and attended the local medical treatment as well as the medical treatment at Nyamagana District Hospital, as a result, he knocked on the door of this court on 15th October 2021, this makes the time of delay to be approximately 73 days.

In determination as to whether the applicant managed to move this court so as to exercise its discretionary power to grant extension of time to file his appeal out of time, it is a trite position of law that in granting



extension of time the applicant must with a sufficient reason account for each day of delay. As the statutory period of the applicant ended on 2nd August 2021, the applicant is duty bound to account for each day of delay from the time when his statutory period ended, to the time when he filed this application. This stand was taken by the Court of Appeal, which I am bound to follow in the case of **Dar es Salaam City Council v Group Security Co. Ltd**, Civil Application no 234 of 2015 CAT at Dar es Salaam where it was stated that:-

"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for each day of delay."

In fact, countless authorities of the Court of Appeal emphasized on the applicant to account for each day of delay even if the delay is of a single day. In the case of **A- One Product Brothers vs Abdallah Almas & 25 Others**, Civil Application No. 586/18/ 2017 it was stated that, even a delay of a single day should be accounted for. Also, in the case of **Bushiri Hasani vs. Latifa Lukiko Mashayo**, Civil Application No. 03 of 2007 CAT it was held that: -

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



Turning back to our application at hand, the applicant has explained that, the delay was caused by sickness as he underwent medical treatment as shown in the Exhibit attached in his affidavit. Upon scrutinising the said exhibit with an eye of caution, I find the letter from Nyamagana District Hospital is not sufficient evidence to prove that the applicant was seriously sick to the extent that he failed to process or instruct his advocate to prosecute the appeal. Apart from the letter being dated on 12th October 2021, which in fact to my opinion is the date when the applicant went to the hospital as it is also evidenced by the payment of consultation services of Tshs 7,000/=, the letter does not show if the applicant was hospitalized as he claims to be in bed for three months, which made it impossible for him to move or give any instructions to his lawyer, or unable to walk or exempted from duty. The report only generalized that the applicant underwent medical treatment for more than three months consecutively from July 2021 to October 2021 but nothing to exhibit that he was hospitalized, and he was unable to walk or give instructions to his advocate as I have earlier on noted.

To my view, this suggests that the applicant was not seriously sick to the extent of failing to process his appeal within the prescribed time provided for by the law.



The applicant also attached an introductory letter from the Chairman of Ishokela small village introducing him to be allowed to undergo local treatment. With due respect, this letter has nothing to do with this application as it cannot be substituted that the applicant's delayed in filing the appeal within the prescribed time.

While I am agreeing that sickness may be a ground for extension of time, the applicant is duty bound to account for each day of delay and not to generalize it. It is a trite position of the law that, failure to account for each day of delay would result in the dismissal of the application. This has been said in the case of **Juma Shomari v Kabwere Mambo**, Civil Application No 330/17 of 2020 CAT at Dr es Salaam where it was held that:

"It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application."

The applicant through his counsel cited the case of **Richard Mlagala and Others** (supra) to support of his application for this court to grant the application of time. With due respect, I find the cited case is distinguishable from our case at hand because in the cited case, the applicant had lodged the record of appeal and prays for leave to amend

the whole record of appeal by binding it in the proper chronological order. It means that in the first place the applicant lodged his record of appeal within time which is different in our case at hand in which the applicant did not file any appeal to this court.

Since the applicant failed to show a good cause and account for each day of delay, this court cannot exercise its discretionary power to grant an extension of time to the applicant in order to give the 1st respondent rights to enjoy the fruits of the award. For that reason, this application fails.

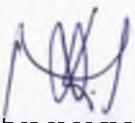
In the final result, I find the Misc. Land Application No. 96 of 2021 is devoid of merit, and it is hereby dismissed with costs.

It is so ordered.




M. MNYUKWA
JUDGE
21/07/2022

Court: Ruling delivered on 21/07/2021 in the presence of the counsel for the applicant and in the presence of the 1st and 3rd respondents.


M. MNYUKWA
JUDGE
21/07/2022