

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 45 OF 2020**

*(Originating from Land Appeal No 6 of 2019, High Court of Tanzania at Dar Es Salaam, ACK.Rwizile J, Arising from Land Application No. 102 of 2018, Kilombero District Land and Housing Tribunal, Hon. Mwihava ESQ. Chairman)*

**ALPHONCE MLEKIA..... APPLICANT**

**VERSUS**

**SAMWEL LIGAMBA.....RESPONDENT**

**RULING**

*Date of Last Order: 21/06/2022*

*Date of Ruling: 22/07/2022*

**E.E. KAKOLAKI, J.**

By way of chamber summons made under section 11(1) of the Appellate, Jurisdiction Act, [Cap 141 R.E 2019], the applicant herein has applied for extension of time within which to file a Notice to appeal to the Court of Appeal and leave to appeal to Court of Appeal to challenge the decision of this Court in Land Appeal No. 06 of 2019, handed down on 09<sup>th</sup> June, 2020 dismissing his appeal. Other reliefs sought are cost of this application and any other or further orders as this honourable court may deem fit to grant. The application is supported by the sworn affidavit of Alphonc Mlekia, the

applicant. When served to the respondent the same met strong resistance as the counter affidavit was filed to that effect.

When the matter was called for hearing, both parties were represented by their respective advocates and the appeal proceeded through written submission. Applicant was represented by Ms Donatila Teendwa while Respondent was represented by Ms. Josephine Mbena, both learned advocates.

This Court under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019], (the AJA) has discretionary powers to grant extension of time to the applicant on two prayers made upon good cause shown by him. Nevertheless, there are no hard or fast rules on what constitutes a sufficient/good cause but the test depends on the circumstances of each case. This position has been discussed in plethora of cases including the case of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (CAT-unreported) where the Court of Appeal had this to say:

*What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been*

*brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant.*

Further it was stated by the Court of Appeal in the case of **CRDB (1996) Limited Vs. George Kilindu**, Civil Appeal No. 162 of 2006 (CAT - unreported) that sufficient or good cause may include promptness of the applicant in bringing the application, valid explanations and lack of negligence. To quote the Court's wisdom had the following to say:

*"...sufficient cause may include, among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the applicant."*

Guided with the above position of the law in this case, it is the applicant's duty among other things to advance to this Court the reasons that forced him to delay in filing both Notice of appeal and the application for leave to appeal in time or any other grounds warranting this Court grant his application. In discharging that duty the applicant in his submission raised two ground, **one**, sickness and **second**, illegality of the decision sought to be impugned. Submitting on the first ground Ms. Teendwa contended that, the appellant could not file the notice of appeal as well as the application for leave within time due to sickness resulted from the accident he sustained which disabled him to properly prosecute application No. 102 of 2018 and

further pursue his intended appeal. She submitted that as the applicant was attending clinics and hospitals several time, he failed to communicate with his advocate in time for instructing her to proceed with appeal processes, hence the delay was not resulted from negligence on his part. The learned counsel relied on the appellant's medical prescription annexed to the affidavit to support her stance. On the second ground of illegality while relying on the case of **Kashinde Machibya vs Hafidhi Said**, Civil Application No 48 of 2009 (Unreported) submitted that, illegality by itself constitutes sufficient reason to grant an extension of time even when the delayed days are not accounted for. Expounding on the illegality of the decision Ms. Teendwa said, this Court erred to when ruled in favour of the respondent without considering that the time limitation for the person to acquire land under adverse possession is twelve years forgetting that, the applicant acquired the disputed land through sale. She therefore invited the Court to find the applicant has demonstrated good cause sufficient enough to warrant this Court grant the application and proceed to grant the same so as to enable the applicant exercise his right of being heard as provided under Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended from time-to-time.

In rebuttal Ms. Mbena started by attacking the competence of the application branding it as omnibus for combining two prayers hence praying for its dismissal. Submitting in opposition of the submission by Ms. Teendwa, Ms. Mbena countered that, the applicant has failed to advance good reasons for delayed period from 9<sup>th</sup> day of June 2020 when the impugned judgment was delivered until 23<sup>rd</sup> October 2020, when this application was filed, which is a period of almost 4 months. Commenting on the sickness as raised good reason for delay by the applicant, she argued that, the same is unfounded as there is no records suggesting that applicant was sick at the material time when the matter was decided, instead applicant filed the PF3 form showing that he sustained accident on 2018 the period when the case was not even heard and/or decided. She contended that, all other medical prescriptions filed including that of 20<sup>th</sup> June 2020 prove that, the applicant was not admitted in the hospital rather was a mere outpatient who could have attended court session or make a follow up of intended appeal if at all had formed that intention as according to he decided to appeal after the respondent had sought to execute the decree of the Court. It was her further contention that, the applicant was negligent as no explanation was offered by the applicant as to why he signed the application on 27/09/2020 but filed

it in court on 23/10/2020 almost a month later. As regard to the ground of illegality Ms. Mbeni said the same was not deposed in the affidavit, hence could not constitute good cause thus prayed for dismissal of the application with costs.

In rejoinder, Ms. Teendwa almost reiterated her submission in chief. She then responded to some points as raised by the respondent counsel in her submission. Regarding the submission that, this application is omnibus, it was her response that, the prayers in this application can be joined as they are preferred from the same provision of the law. To bolster her position she cited the case of **Tanzania Knitwear Limited Vs. Shamsihi Ismail** (1989) TLR 49. Regarding the allegation that, the issue of irregularity or illegality of the decision does not feature in the affidavit it was her contention that, the submission content of irregularity had intention of supporting the prayer for extension of time and not otherwise, in her view the party is not hand tied to the affidavit. She concluded that, the law for extension of time is still developing and the court should enjoy its discretional powers to grant extension of time.

Having considered the affidavit, counter affidavit and submissions for and against this application, the issue which this Court is called for determination

by is whether the applicant has advanced good cause to warrant the Court exercise its discretion to extend him time *to file Notice and leave of appeal*.

It is the requirement of the law as provided for under Rules 83(2) and 45(b) of the Court of Appeal Rules, 2009 as amended (the Rules) that, a person aggrieved by a decision of the High Court and wishes to appeal to the Court of Appeal has to file notice of appeal and application for leave where the appeal lies with leave within thirty days from the date of the decision sought to be appealed against. Before embarking on considering the grounds raised by the applicant in support of his application, I find it pleasing to address albeit so briefly the issue raised by the respondent in her submission as the same is touching the jurisdiction of this Court. It is Ms. Mbena's contention that this application is omnibus for combining two prayers which ought to have been brought under separate and independent application, while Ms. Teendwa holds a contrary view that the prayers are connected, therefore the application is properly before the Court. I think this issue need not detain much this Court as I find the prayers to be intertwined or interrelated or interdependent and therefore encouraged and allowed under our jurisdiction as it was held in the cases of **Gervas Mwakafwala & 5 Others Vs. The Registered Trustees of Morovian Church in Southern Tanganyika,**

Land Case No. 12 of 2013 and **Uwenacho Salum Vs. Moshi Salum Ntankwa**, Misc. Civil Application 367 of 2021 (both HC-unreported). I hold such view as the second prayer for extension of time within which to file an application for leave to appeal depends on the grant of the first prayer for filing the Notice of appeal as leave application cannot be preferred without proof of filed Notice to the Court of Appeal. To say less I agree with Ms. Teendwa's proposition that the complaint by the respondent on omnibus application is wanting, therefore I dismiss it.

I now move to consider the merits of the application in which the decision of this Court sought to be impugned by the applicant was delivered on 09<sup>th</sup> June, 2020. According to the record this application is out of time for more than 105 days as it was filed on 23/10/2020 reckoning from 09/06/2020. Ms. Teendwa says the applicant was sick, therefore was unable to instruct his lawyer to proceed with and reliance is placed on the annexed medical prescriptions from different dispensaries and hospitals at Ifakara. Ms. Mbena argues that, the applicant being outpatient was not incapacitated to proceed with appeal process if at all he was willing to so do. It is true and I agree with Ms. Teendwa that, sickness constitute good cause for extension of time as it was stated in the case of **Azizi Abdulrasul Vs. Balozoi Ibrahim**



**Abubakar & Bibi Sophia Ibrahim**, Civil Application No 79 of 2016 (CAT-unreported) where the Court of Appeal of Tanzania, had this to say:

*"...the illness of the applicant is sufficient to constitute good cause."*

It should however be noted that, mere assertion by the applicant that he was sick without justifying for how long was he under sickness is not enough to constitute good cause for extension of time as he is also duty bound to prove for each and every day of his delay. See the cases of **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No 13 of 2015 and **Sebastian Ndaula v Grace Rwamafa**, Civil Application No 4 of 2014 (All CAT-unreported). In Sebastian Ndaula (supra) the Court of Appeal had the following to say of the applicant's duty to account for the delayed days:

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

In this matter, on my inquisitive perusal of the applicant's attached medical chits, it is noted that, the applicant lastly attended Ifakara Dispensary on 20/07/2020, as outpatient which is more than 84 days up to the time of filing this application in Court on 23/10/2020. As the Court is not told what happened to him after that date the said 84 days remain unaccounted for.

Further to that, the Court is not told as when the applicant recovered or got relief from sickness so as to meet his lawyer rather what is deduced from the pleadings is that this application was prepared and signed by him on 23/09/2020 but filed in Court on 23/10/2020. Again there is no explanation to such delay of almost a month in filing the application after being signed. All these applicant's conducts depicts nothing than negligence and lack of diligence on his part. It is a well settled principle of law that, negligence on the part of the applicant has never constituted sufficient reason for extension of time as sufficient cause include lack of negligence and apathy. This principle has been stated in number of decisions including the case of **CRDB (1996) Limited Vs. George Kilindu**, Civil Appeal No 162 of 2006, (CAT-unreported), where the Court of Appeal held that:

*"...sufficient cause may include, among others, bringing the application promptly, valid explanation for the delay and **lack of negligence** on the part of the Applicant."*

In this matter since the applicant acted negligently and since he has also failed to account for 84 days of delay, I find he reason of sickness is insufficient to bail him out of the duty to account for all 105 delayed days. Hence the first reason is dismissed.

Moving to the second reason on the issue of irregularity or illegality of the decision sought to be impugned and the submission by Ms. Teendwa that in itself is sufficient cause, I am at one with her that when illegality of the decision sought to be challenged is established the same constitute sufficient reason for extension of time, regardless where each and every day of delay has been accounted for. See the cases of **Transport Equipment Vs. Valambia and Attorney General** (1993) TLR 91 (CAT) and **VIP Engineering and Marketing Limited and Three Others Vs. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (CAT -unreported). It is however noted and as rightly submitted by Ms. Mbona which submission I embrace that, this ground of illegality came in as an afterthought for not being deposed in the applicant's affidavit which in law is the only evidence in support of his application. It only featured through the written submissions by the applicant's advocate Ms. Teendwa and in contravention of the law as it is well settled that, submissions are not evidence, as their purposes is to explain the already admitted evidence. This position was well underpinned in the case of **TUICO at Mbeya Cement Company Ltd vs. Mbeya Cement Company Ltd and Another** (2005) TLR 41 where the Court of Appeal said:

*It is now settled that submissions is a summary of arguments.  
It is not evidence and cannot be used to introduce evidence.*

Even if I was to consider the ground of illegality of the decision as raised by the applicant still I would hold the same is mere assertion as the law is very clear that illegality of the decision must be visible or apparent on the face of record, which is not the case in this matter. The second ground also fails.

That said and done, I am satisfied that the applicant has failed to advance good cause sufficient enough to move this court exercise its discretion judiciously to grant the applicant's prayers. The application is therefore devoid of merit and the same is hereby dismissed with costs.

It is so ordered

DATED at DAR ES SALAAM this 22<sup>nd</sup> day of July, 2022.



E. E. KAKOLAKI

**JUDGE**

22/07/2022.

The Judgment has been delivered at Dar es Salaam today 22<sup>nd</sup> day of July, 2022 in the presence of the Appellant in person and Mr. Asha Livanga, Court clerk and in the absence of the Respondent.

Right of Appeal explained.



E. E. KAKOLAKI  
**JUDGE**  
22/07/2022.