

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**Miscellaneous Land Application No. 38 of 2020**

*(Originating from Land Appeal No. 8/2019 of the District Land and Housing Tribunal for Iramba and Arising from Kaselya Ward Tribunal in Land Case No. 7/2018)*

**SHABANI JUMA KISONGA** (As a Legal Representative  
of the Estate of the Late PILI SELEMANI KIULA)..... **APPLICANT**

**VERSUS**

**JUMANNE OMARY** (as a Legal Representative of the  
Estate of the Late OMARY MJANGE DUDU)..... **RESPONDENT**

**RULING**

17/2/2022 & 28/03/2022

**KAGOMBA, J**

SHABANI JUMA KISONGA (as a Legal Representative of the Estate of the Late PILI SELEMANI KIULA) (hereafter “the applicant”) has filed an application for extension of time within which he shall present his appeal against the Judgment of the District Land and Housing Tribunal for Iramba at Kiomboi (hereinafter “Iramba DLHT”) dated 04/02/2020. He also applies for costs and any other orders this Court may deem fit and just to grant.

The application, which inadvertently seeks the Court “to order an extension of time for which the applicant shall present his application for extension of time (sic) against the judgment of the District and Housing Tribunal” is supported by affidavit of SHABAN JUMA KISONGA, the applicant.

In the supporting affidavit, the purpose of the application is properly disclosed. The applicant is dissatisfied with the judgment of Iramba DLHT in Land Appeal No. 8 of 2019, which was in favour of the respondent. The respondent herein is JUMANNE OMARY (as A Legal Presentative of the Estate of the late OMARY MJANGE DUDU). As such the application does not seek for an order of extension of time to file "Application for extension of time against the judgment" of Iramba DLHT, but to file an appeal against the said judgment, which was made on 04/02/2020.

The applicant in his affidavit states that he failed to appeal within prescribed time because his father was seriously sick and was admitted at Sepuka Dispensary on 30/01/2020. The sick father of the applicant was later discharged. A copy of letter from medical officer in charge of Sepuka dispensary was attached to the affidavit. The applicant further states that after the discharge, which according to the letter from Sepuka dispensary was on 31/01/2020, the applicant was responsible to take care of his father up to the time of filing this application. His father, according to the applicant's affidavit, suffered from stroke and was receiving traditional treatment under the applicant's care. For such reasons he could not file his appeal in time.

The applicant therefore avers that the failure to file his appeal in time is not his "fault". He thus prayed the Court to grant the application to prevent injury to himself and his family.

On his side, the respondent filed a counter affidavit where he vehemently denied the sickness of the applicant's father and put him to strict proof thereof. He challenges the attached letter from Sepuka dispensary for two reasons; One, the letter has no address and two, the letter says the patient (appellant's father) was discharged on a date before the Judgment of the Land Case No. 8 of 2019 was delivered.

The respondent opposed the averment that even after being discharged the applicant continued to take care of his father. He also opposed the averment that the delay was not a fault of the applicant, and therefore opposed the prayer for an order of extension of time. The respondent further averred that he has great chance to win the intended appeal since both the trial Tribunal and the appellate Tribunal observed the applicant had no ownership of the disputed land.

During hearing, both parties appeared in person. The applicant prayed to adopt his chamber summons and affidavit as his submission. The respondent did the same but added a clarification that the applicant's father was discharged on 31/01/2020 after his doctor found his health to be fine, while the Judgment the applicant seeks to overturn was delivered

on 4/2/2020. The respondent added that the applicant's father was sick but recovered before the said Judgement was delivered.

The respondent further submitted that the applicant had sixty (60) days to file his appeal but ended up delaying for four (4) months when he filed this application.

He further submitted the medical chit attached to the applicant's affidavit is not original but a photocopy which does not bear the logo of the hospital.

In re-joining the applicant clarified that his father got sick on 30/1/2020 and lost consciences. His sick father was unable to stand up and walk, so he had to take care of him.

The applicant further clarified that his father continued to be sick even on the date when the judgment of Iramba DLHT was delivered. He added that due to sickness of his father he could not even attend the Tribunal when the impugned Judgment was being delivered. That, he continued taking care of his father until when the father passed away on 21/1/2021. He said it was until after his young brother had come from Arusha, he was able to follow up on copies of the Judgment.

Regarding medical chit being a copy, he said he retained the original, which has the logo. Regarding the delay of four (4) months, he said he filed his application few weeks later and not four (4) months as the respondent had put it.

The above were the arguments for and against the application put forth by the lay parties before the Court. First of all, I commend them for focusing on facts which are materially relevant to the determination of this application. The Court has one issue to decide upon. The issue is whether the applicant has shown sufficient cause for the application to be granted.

As clearly submitted, the applicant's delay to file his appeal in time is grounded on the care he was giving to his ailing father. He submits to the effect that his father was sick before, during and after the pronouncement of the Judgment of the Iramba DLHT. He says such care, unfortunately, encountered a big blow as his father demised on 21/01/2021.

The respondent has vehemently challenged the reasons stated by the application in the supporting affidavit. The respondent is of the view that the dates when the applicant's father was sick as per medical chit, have nothing to do with the date of delivery of the impugned Judgment, the medical chit was a photocopy with no logo of the dispensary



concerned and above all, he stands better chances of winning the intended appeal than the applicant. These are the gist of the arguments put forth for consideration of the application by this Court.

In determining whether sufficient cause has been shown, I find guidance in the decision of the Court of Appeal in **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil application No. 2 of 2010 (unreported) where the Court of Appeal set the following guiding criteria to help in deciding applications for extension of time. Courts are guided to consider;

- (a) The degree of lateness
- (b) The reason for lateness
- (c) The prospect of succeeding in the intended appeal and obtaining the relief sought against the other part.
- (d) Whether there will be prejudice to the other party.

I shall test the application in hand by applying the above criteria, one by one, as follows;

On the degree of lateness, it is my finding that the same is relatively high. The Judgment of Iramba DLHT which the applicant seeks to eventually overturn was delivered on 04/02/2020. Under section 38(1) of the Land Dispute Courts Act [Cap 2016 R.E 2019] the application had sixty

(60) days to file his appeal. The appeal was to be timely filed by or on 04/4/2020. The applicant came to file this application on 18/6/2020, being more than seventy (70) days beyond the earlier sixty (60) days statutory time. This is a long delay which calls for a strong reason to justify.

On the reason for lateness, it is the affidavit of the applicant which shows that after delivery of Judgment (of Iramba DLHT) the applicant's father was seriously sick, admitted to Sepuka Dispensary and later discharged, but the applicant continued to take care of him up to the date of filing the application. This is the main reason why the applicant did not appeal within prescribed time.

In his further clarification during rejoinder the applicant told the Court that his ailing father passed away on 21/01/2021. This is not stated in his affidavit for obvious reason. The affidavit was affirmed on 20/5/2020 while alleged demise of the applicant's father is said to have happened on 21/01/2021. While the respondent tried to genuinely impeach the medical chit from Sepuka dispensary, for its lack of official logo and being presented as a copy, the Court has no reason to doubt what was stated in the affidavit regarding the sickness of the applicant's father. The applicant has stated that apart from being taken to Sepuka Dispensary, the said patient used to receive traditional treatment under the care of the applicant, which is common in our villages.

The Court also does not have good reason not to trust the applicant that his ailing father eventually passed away on 21/1/2021. Under these for circumstances which mostly are covered in the supporting affidavit, save for the demise of the applicant's father, the Court finds that there was a reasonable cause for the delay to file an appeal. This finding is not based on sympathy but on facts pleaded in the supporting affidavit whose preponderance satisfies the Court that in deed a good cause for delay existed.

On the prospect of succeeding in the intended appeal, the applicant did not submit on this aspect. However, records, show that the late Pili Selemani Kiula, in whose shoes the applicant appears in Court as the legal representative, once won the case at the Kaselya Ward Tribunal. The respondent managed to have the decision of the Kaselya Ward Tribunal overturned by the Iramba DLHT. As such, this Court finds it appropriate to leave the door open to the applicant to challenge the decision of Iramba DLHT.

With regard to whether there will be prejudice to the respondent, I find none. The legal battle is still open for either side to win it depending on the grounds to be presented during hearing of the appeal.




In the upshot, I find reasonable cause has been shown to support the application and I hereby grant the same accordingly. The applicant has sixty (60) days from the date hereof to file his appeal. Each party to bear his own costs.

It is so ordered.

**Dated at Dodoma this 30<sup>th</sup> Day of November, 2021.**



  
**ABDI S. KAGOMBA**  
**JUDGE**