

HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND APPLICATION NO.13 OF 2021

(From the decision of the District Land and Housing Tribunal for Iringa in
Land Application No.74 of 2017)

CHANDE JACKSON MKINI (The Administrator of the late

FATUMA SELEMANII MWAMWINDI) APPLICANT

VERSUS

ZAINABU HUSSEIN NGOLO RESPONDENT

28/4 & 19/5/2022

RULING

MATOGOLO, J.

This is an application by the applicant Chande Jackson Mkini (The Administrator of the Estate of the late Fatuma Selemani Mwamindi) for an order that the court be pleased to enlarge time to the applicant so that he can file an appeal out of time against the decision of District Land and Housing Tribunal (DLHT) in Land Application No.74 of 2017 delivered on 02/12/2020. He also prays for costs and any other order as the court deems fit and just to grant.

The application is by way of Chamber summons made under Section 41(2) of the Land Disputes Courts Act, (Cap. 216 R.E 2019) and is supported by an affidavit affirmed by the applicant.

The brief background of the matter is that, the respondent sued the applicant for trespass on his house Plot No. 60 "A" situated at Mshindo within Iringa Municipality. The respondent said he bought the suit plot in 1975 through the respondent who is her mother and on several times from 1975 to 1980, she used to send money to her mother so as to erect a building on the suit plot No. 60 "A".

At the hearing of this application parties appeared in person (unrepresented). The matter was disposed of by way of written submissions.

In support of his application the applicant submitted that, soon after getting copy of the judgment he wished to appeal against the decision of the DLHT within Forty-Five days legally prescribed time limit. He went on submitting that, it is so unfortunate that, while he was contemplating on filing the appeal he was on medication due to the sickness which attacked him as from 10/03/2021. He said he was advised by the doctor to a long bed rest at home. He submitted that, the sickness hindered him from taking the necessary steps to lodge the appeal on time. He attached the note from the doctor who attended him at Frelimo Hospital Iringa as from 10/03/2021 as annexure CJM-2.

He went on submitting that, he is humbly begging this Court to consider his case and the dilemma which befell him due to sickness. And this court will surely appreciate that the delay to file the appeal is supported by a good cause. He said he is calling upon this court to infer section 41(2) of The Land Disputes Courts Act [Cap. 216 R.E 2019] which enables/ allows this court to grant extension of time to file an appeal out of time.

He submitted further that, he wishes to impress upon this court on the fact that he filed this application on 11/06/2021 after significant improvement in his health and gaining strength. Further, driven by anxiety, and for the sake of justice, the applicant is hopeful that this submission in respect of application for extension of time to file appeal meet the favorable discretion and that this court will grant the leave prayed for. He concluded by praying to this court to grant his application.

In reply the respondent narrated the brief background of the case that, sometimes in 2017 the respondent filed land application No. 74 at the DLHT for Iringa against the applicant in this Misc. Land application and the judgment was delivered on 02nd December, 2020 in favor of the respondent in this application.

She submitted that on 11th March 2021 the respondent in this Misc. Land Application number 29 of 2021 and the applicant in this Misc. Application who is a judgment debtor rejected the summons sent to him and hence the matter was heard ex-parte. The application for execution

was filed after three months since the judgment was delivered in favor of the respondent in Misc. application.

He went on submitting that, the order of execution was delivered on 27th April 2021 and that Majembe auction Mart evicted the applicant on 11th June 2021. The case file was closed on 26th July 2021. The applicant in this Misc. Application was aware of the execution and the applicant duly signed the documents of eviction issued by Majembe Auction Mart on 11th June, 2021.

She submitted further that, according to section 41(2) of The Land Disputes Courts Act [CAP. 216 R.E 2019], provides that any party who is aggrieved by a decision or order of the DLHT in the exercise of its appellate or revisional jurisdiction, can appeal to the High Court (Land Division). The applicant in this Misc. Land was to file his appeal before 17th February 2021 which was the end of 45 days to file his appeal.

She contended that, this application was filed after expiration of 114 days while applicant alleging that he was sick. She said that, the applicant has attached a mere letter from Frelimo Hospital which is not certified. The letter indicates that the applicant started to attend treatment on 10th March 2021 and that he was an outpatient. The applicant started to attend medical treatment at Frelimo Hospital after the expiration of 20 days to file his appeal. She argued that, this means that, from 2nd December, 2020 to 9th March 2021 the applicant was well and this is justified by the letter written by Dr. Mbaraka Mpangachuma, the Medical Officer in charge at Frelimo Hospital, indicating that, the applicant started to attend medical

treatment on 10th March 2021. But the deadline for the applicant to file his appeal was on 17th February 2021, that means from 2nd December 2020 to 9th March 2021 the applicant was not sick. She was of the considered opinion that, the delay to file his appeal is caused by his own negligence and not sickness as the applicant indicates in his submission, is trying to use sickness as a good cause to grant him time extension while it is not true.

She contended that, sickness could be a good cause for the applicant to be granted extension of time if the applicant could fell sick immediately after the delivery of the judgment on 2nd December, 2020 or before expiry of 45 days on 17th January 2021. The applicant started to attend Medical treatment on 10th March 2021, fifty-one days after expiration of time to file his appeal.

She submitted that, it is settled that where extension of time is sought the application will be granted, upon demonstrating sufficient cause for the delay. Conversely it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur. The applicant neither filed the notice for the intention to appeal nor letter to obtain the copies of judgment and proceedings at the court.

She contended that, in the present matter in terms of submissions and affidavit evidence it is her considered view that the fourth, fifth and sixth reasons advanced in the applicant's affidavit are not sufficient causes

for the delay to file the appeal on time and the claim of being vigilant in the prosecuting the extension of time to file appeal out of time are not adequate to be seen as sufficient cause.

She went on submitting that, the requirement of accounting for every day of delay has been emphasized by the Court in numerous decisions, she cited the cases of ***Bushiri Hassan Versus Latifa Lukio, Mashayo***, Civil Application No.03 of 2007 (unreported) and ***Karibu Textile Mills versus Commisioner General (TRA)*** Civil Application No. 192 of 2016 (unreported). In ***Bushiri Hassan*** case, the Court stated that:-

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

She submitted further that, the applicant has delayed for 114 days and he has failed to account for each day as it required by the law. She said the applicant has failed to provide thorough explanation of his sickness and hence this as a ground for extension of time is to be rejected, to cement her argument she cited the case of ***Shembilu Shefaya versus Omari Ally*** [1992] TLR 245, in which an application for extension of time on basis of sickness was rejected because the applicant had not provided thorough explanations regarding the sickness.

She said, the applicant neither in his affidavit in support of the application nor in the submissions has given any explanation on what transpired on

the dates between the pronouncement of judgment and the date he fell sick and started to attend at the hospital for treatment as well as on the dates between his last attendance in hospital and filing of this application.

She said, in the case of **Stade Mwaseba versus Edward Mwakatundu** Misc. Land Application No. 19 of 2019 (unreported), in which it was stated:-

“As decided in the case of Shembilu Shefaya (supra), it does not suffice to only mention that the applicant was sick. Thorough explanation regarding the sickness sought to have been provided. The applicant should have explained as to when exactly did he become fit to work on filing his appeal and accounted each and every day of delay” see of **Bushiri Hassan Versus Latifa Lukio, Mashayo**, Civil Application No.03 of 2007 (unreported) quoted in **Moto Matiko Mabanga versus Ophir Energy PLC, Ophir Services PTY LTD and British Gas Tanzania Limited**, Civil Application No. 463/01 of 2017”.

The respondent completed by praying to this court to dismiss this application with costs.

Having read the respective submissions by the parties, the issue to be determined here is whether the applicant has advance sufficient reasons to warrant this court to exercise its discretion to grant the application or not.

It is principle of law that, an application for extension of time is a discretion of the court to grant or refuse it, see the case of ***Benedict Mumelo versus Bank of Tanzania (2006) 1 EA 227.***

In the case of ***Lyamuya Construction Company Limited versus Board of Trustees of Young Women Christian Association of Tanzania***, Civil Application No. 02 of 2010 (unreported), the Court of Appeal of Tanzania formulated four factors to be considered by any court before granting extension of time that is:-

- “(a)The applicant must account for all the period of delay.*
- (b)The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged”.*

In the instant application the applicant has stated in his affidavit particularly at paragraph 4,5, and 6, that, the main reason for his delay is sickness and he has attached a letter written by the Medical Doctor one Dr. Mbaraka Mpangachuma as annexure AP-3.

The present application was filed under section 41(2) of the Land Dispute Court Act (Cap. 216 R.E. 2019), which provides as follows:-

"41 (2) 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 good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days".

According to the above provisions the applicant was supposed to appeal within 45 days from the date judgment was delivered.

It is clear from the records that, the judgment of the DLHT was delivered on 2nd December, 2020 and the present application was filed on 11/6/2021. This application was filed after 114 days have elapsed.

As I have already stated above that, the reason advanced by the applicant for his delay is sickness and he has attached a letter written by Dr. Mbaraka Mpangachuma.

It is settled principle of law that sickness is a good ground for extension if it is proved by the applicant that, she was sick as it was held in the case of ***Kapapa Kumpindi versus The Plant Manager Tanzania Breweries*** Civil Application No. 06 of 201 (unreported) in which at page 4 it was held that:-

"Sickness is a good ground for extension of time".

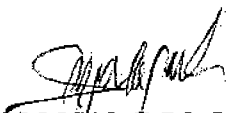
However, in the present application, the written letter shows that, the applicant attended treatment on 10/03/2021, while the judgment was delivered on 2/12/2020 and the copy of judgment was ready for collection on 13/01/2021. The applicant was bound to tell this court as to what he was doing from 13/01/2021 when the judgment was ready for collection to 10/03/2021 when he was attended at Frelimo hospital as an outpatient for the first time. Also the said letter written by Dr.Mbaraka Pangachuma in my opinion is not sufficient because it shows when the applicant started treatment but does not show when treatment ended. The same evidenced that, the applicant was attending at the hospital as an outpatient, although was advised to have long bed rest at home, this shows that he was not seriously sick leading to his failure to appeal in time. I think if real the applicant was serious sick he was supposed to present before this court a medical chit/report explaining the whole period he has been sick and unable to process his appeal. The applicant in this application in my opinion has failed to account for each day of delay.

The applicable law in this country is that applicants for extension of time must account for each day of delay, as it was insisted in the case of ***Bushiri Hassan*** (supra).

The importance of accounting for each day of delay was explained in the case of ***Bushiri Hassan v. Latifa Lukio Mashayo*** (supra) that, if that is not done then there could be no point of having rules prescribing periods within which certain steps have to be taken. The Counsel for the Respondent submitted rightly that, the applicant has failed to account for

each day of delay. I join hand with her that, the applicant has failed to account for each day of delay as required by the law. Having discussed as herein above, it is my considered opinion that, the delay to file appeal was caused by negligence by the applicant and the applicant has failed to demonstrate sufficient reasons for his delay to enable this court to extend time for him to appeal out of time. Thus, this application has no merit the same is dismissed with costs.

It is so ordered


F.N. MATOGOLO
JUDGE

19/5/2022

Date: 19/05/2022
Coram: Hon. F. N. Matogolo – Judge
Applicant: Present
Respondent: Present
C/C: G. Mpogole

COURT:

Ruling delivered.


F. N. MATOGOLO
JUDGE

19/05/2022