

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISC. LAND APPLICATION NO. 54 OF 2021

(Arising out from Land Case Appeal No. 9/2021 in the Resident Magistrate Court Tabora with extended jurisdiction and (originating from land case Appeal No. 98 of 2018 at the District Land and Housing Tribunal at Tabora)

JUMANNE NKUMINGIAPPLICANT

VERSUS

SIMBILA MAGAZIRESPONDENT

RULING

Date: 14/6/2022& 15/7/2022

BAHATI SALEMA,J.:

The applicant herein, named **Jumanne Nkumingi** approached this court seeking an order for extension of time to lodge a notice of appeal against the judgment at Tabora in Land Appeal No. 9/2021, costs of the application, and any other relief this Court may deem fit and just in the circumstances of the application. The application comes under section 11(1) of the Appellate Jurisdiction Act, Cap.141 [R.E 2019] and is supported by an affidavit sworn by the applicant.

The grounds as deposed in the affidavit upon which extension of time is sought run as follows.

1. That, in Land Application No. 98 he was declared a lawful owner of the land in dispute and the judgment in the said land appeal before this honorable court was delivered in favor of the respondent herein above being aggrieved with the said decision initiated promptly step to file a notice of intention to appear within a prescribed time, the applicant's however, while was in the process his son had bedridden and the applicant had to leave all the initiatives and attending his son at Mabama to the local doctor.
2. That, was on 15th November, 2021. The applicant's son got well and the applicant immediately re- initiated. The step of filing a notice of intention to appeal and when the applicant adduced instructions to the advocate, it came to the advocate's knowledge that filing that notice of intention to appeal was already out of the prescribed time.
3. That, the judgment of the resident Magistrate court with an extended jurisdiction in land case appeal No. 9 of 2021 is tainted with illegalities which if the same are not reversed will cause the applicant to suffer beyond repair.
4. That, the reasons for the applicant's delay to file a notice of intention to appeal were beyond prudent control and hence condonable.
5. That, it is for the interest of justice that, the prayers sought in chamber summons be granted as they will occasion

nothing on a part of the respondent but he is the applicant who will suffer would not the prayers sought to be granted.

In his counter-affidavit, the respondent Simbila Magazi vehemently disputed the application and that is unmaintainable under the law as the son of the applicant is neither a party nor the third party recognized by the law to affect the proceedings.

When the application was called up for hearing, the applicant appeared in person unrepresented, whereas the respondent was also unrepresented. The applicant had no word to add; rather, he prayed to the court to adopt his affidavit to form part of his submission.

In reply the respondent being also a layperson had nothing substantial to say only he urged the court to adhere to the law. Meanwhile, he prayed to the court to adopt his counter affidavit.

Having gone through the affidavit and counter affidavit submitted by the parties, the issue is whether the application has merit.

The position of the law is clear that the court may for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or application. That position of the law has been expounded in such cases including the case of **Mumello V/S Bank of Tanzania** (2006) IEA 227 (CAT) where it is a settled principle of the 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. Having perused the records and the substance of the application, of all reasons laid down by the applicant, sickness is a sufficient cause or good cause for an extension of time.

With the above observation and in the interest of justice, I grant the application for an extension of time to lodge a notice of appeal with an order that the applicant may file a notice of intention to appeal to this court within thirty days from the date of this order.

Order accordingly.



A. BAHATI SALEMA

JUDGE

15/7/2022

Ruling delivered in chamber on this 15th July, 2022 in the presence of both parties. Via virtual link.



A. BAHATI SALEMA

JUDGE

15/07/2022

Right of Appeal fully explained.



A. BAHATI SALEMA

JUDGE

15/07/2022

