

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO DISTRICT REGISTRY)**

AT MOROGORO

MISC LAND APPLICATION NO. 16 OF 2022

(From Land Application No.168 of 2019 of the District Land and Housing Tribunal for Morogoro, at Morogoro delivered on the 27th October, 2021)

AMADI RASHID DILAWA..... APPLICANT

VERSUS

ATHUMAN SHABANI WAZIRI DILAWA (Administrator of the Estate
of the Late Shabani Waziri Dilawa)**RESPONDENT**

R U L I N G

14th June & 12th August, 2022

CHABA, J.

On 29th December, 2022 the applicant, Amadi Rashid Dilawa lodged the instant application before this court in which he made three prayers namely; an application for extension of time within which he may file an appeal against the decision of the District Land and Housing Tribunal for Morogoro, at Morogoro in Land Application No. 168 of 2019 delivered on the 27th October, 2022, costs be provided for and any other relief that this Honourable Court may deem just to grant.

The application filed in court comprised of a Chamber Summons supported by an affidavit deposed by the applicant himself. The application was preferred under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019]. As indicated above, this application is supported by the affidavit of

the applicant mainly stating the reasons why the same should be granted. Upon being served with the affidavit, the respondent Athumani Shabani Waziri, filed the counter affidavit bitterly opposing the same.

The brief background to this application as gleaned from the applicant's application, is to the effect that: on 27th October, 2021, the trial tribunal delivered the judgment in respect of Land Application Case No. 168 of 2019 and decided in favour of the respondent herein. Discontented with the trial tribunal's decision, the applicant began his journey to seeking for his rights. At first, he unsuccessfully applied to be availed with copies of judgment, proceedings and decree. After several follow ups, he lodged a formal letter to the trial tribunal on 29th November, 2021 praying to be supplied with the copies of judgment and decree. Eventually, he was supplied with the documents on 8th December, 2021, which is almost 41 days from the date of the decision.

The applicant alleged that he was sick and used to be attending at Mkambarani Health Center for medical examination, checkup and medication. He mentioned the dates that he attended at the said Health Centre including the 5th, 10th and 16th December, 2021 respectively. As alluded to above, now the applicant is seeking for an extension of time within which to file his appeal out of time basing on two main reasons; One; sickness after he had attended medical examination / treatment on 5th, 10th and 16th December, 2021 at Mkambarani Heath Centre and lately receiving copies of judgment and decree where only four (4) days had been remained to file his appeal within the prescribed time, which in his opinion was not enough.

With the parties' consensus the application was disposed of by way of written submissions. Ms. Leah Mwasia, learned advocate submitted on behalf of the applicant, while the respondent enjoyed the service of Ms. Wamunza, Senior advocate. Both parties adhered to the court's schedule.

Before amplifying her submissions, Ms. Mwasia learned advocate prayed to adopt the whole application and form part of her written submissions. Submitting on the factor of sickness, the learned advocate argued that the applicant's health condition was not good to the extent that he was obliged to attend at Mkambarani Health Centre on 5th, 10th and 16th Day of December, 2021 for medical examination or treatment. She contended that on 8/12/2021 when the applicant received a copy of judgment and decree of the trial tribunal was still sick. She accentuated that on that particular day the applicant had only remained with four (4) days to file his appeal. She stated that, since the applicant used two (2) days at Mkambarani Health Centre on 10th and 16th December, 2021 to attend medical treatment, in the circumstance it was too difficult for him to prepare his grounds of appeal and file the same in time.

The learned advocate referred this court to annexure "E4" which are the copies of medical treatment (health center individual's attendance file) dated on 5th, 10th and 16th day of December, 2021 respectively. Indeed, the applicant relied on these documents as evidence to prove that he was sick. She submitted further that sickness is usually taken by the court as sufficient reason to warrant for an extension of time as it was underscored by this court in the case of **Abeid Ibrahim v. Pius Abiud**; Misc. Criminal Application No. 7 of 2020, HC at Moshi Registry (Unreported). In this case

the court (Hon. B. Mtungi, J.,) borrowed a leaf from the case of **Emmanuel Maira v. The District Executive Director Bunda Council**, Civil Application No. 66 of 2010 (Unreported), where she granted the prayer sought by the applicant for an extension of time on the ground of sickness. It was held inter-alia that:

".....health matters in most cases, are not the choice of human being, cannot be shelved and nor can anyone be held to blame when they strike...."

As regards to the factor of failure by the trial tribunal to issue him with the copies of judgment and decree on time, the learned advocate submitted that four (4) days were not enough for him to prepare the grounds of appeal and file the same in court. She highlighted that the applicant applied for the copies of judgment and decree both orally and in writing several times but in vain. She accentuated that, had the appellant would have been availed with these documents on time, he would have managed to lodge his appeal within time. She further underlined that, from the date of judgment on 27/11/2021 to the date in which the applicant was supplied with the copies of judgment and decree on 8/12/2021, is almost 41 days. Thus, due to ill-health he failed to lodge his appeal in court within time. He therefore, invited this court to consider annexures "E1" and "E2" which are formal application letter requesting copies of judgment and decree on 29/11/2021 and the applicant complaint's letter dated on 8/12/2021 directed to the Hon. Deputy Registrar of the High Court of Tanzania - Morogoro Zone notifying him how the trial tribunal was delaying to avail him with the copies of judgment and decree. She further argued that, the appellant adhered to all procedures and manifested clearly by showing his intention to appeal. He was only

disappointed by the trial tribunal when it delayed to supply him with the copies of judgment and decree.

Lastly, the learned advocate contented that since there is high chances of success in the intended appeal due to irregularities or illegality of the trial tribunal's judgment, this is another reason for him to seek for an extension of time. She then asked this court to take into consideration the length of delay, chances of success of the intended appeal and the reasons for delay. It was on this account the applicant prayed this court to consider his prayers accordingly. He argued that if the same will not be considered, he will suffer irreparable loss.

On her part, Ms. Wamunza, learned advocate for the respondent strongly attacked the applicant's submissions. Countering the applicant's submissions, she highlighted that in respect of annexures "E4" which are medical documents or reports showing that the applicant attended at Mkambarani Health Centre for medical treatments on 5th, 10th, and 16th December, 2021 respectively, the same does not bear the names of the applicant. She went on stating that although it was alleged that the applicant attended at Mkambarani Heath Centre and medically treated as an outpatient as evidenced by the said medical report dated 6/12/2021, and the medical reports shows that the applicant had flue, headache and blunt pain, but the truth is that he was not sick enough that is why he wasn't admitted and hospitalized at the said Heath Centre.

Moreover, Wamunza contended that it is on record that the applicant attended at Mkambarani Health Center on 5/12/2021 and that on 8/12/2021 was able to travel from Mkambarani area where he resides to Morogoro town

or municipality where he managed to collect the copies of judgment and decree. He stayed at home for about five (5) days from 5/12/2021 before attended at the said Heath Centre on 10/12/2021. Thereafter, he remained at home for another six (6) days before attending similar treatment at Mkambarani Health Centre on 16/12/2021. Court record divulges further that the applicant spent another fifteen (15) days before filling this application on 29/12/2021. From the above explanations, Wamunza accentuated that since the delay of fifteen (15) days was uncalled for, she invited the court not to consider his application on the ground of being devoid of merits.

She concluded by stating that the applicant failed to account for each day of delay and totally failed to meet the threshold of three-tests underscored by our Apex Court in the case of **Registered Trustees of Khoja and 12 Others v. Salum Juma Jusa and Another**, Civil Application No. 44 of 2017 CAT - Dsm (Unreported). The Court at pages 9 – 10 of the typed judgment held:

- 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."*

As regards to the ground of being out of time for late supply of copies of judgment and decree, Wamunza submitted that the applicant was supplied with the documents and received the same in time on 8/12/2021. She stressed that only four (4) days endured to accomplish the statutory 45 days to exercise his appeal as such right began to run from 8/12/2021 where almost 41 days had elapsed. She underlined that since the impugned

decision was delivered on 27/10/2021 and this application was filed on 29/12/2021, it amounts to 64 days. If the statutory time to lodge an appeal (45 days) deducted from 64 days, it means that the applicant delayed to lodge his appeal for about (19 - *sic*) 17 days and did not explain the reasons for such a delay.

To buttress his argument, Wamunza cited the case of **Vodacom Foundation v. Commissioner General (TRA)**, Civil Application No. 107 of 2017, [CAT - Dar es Salaam (Unreported)] where the Court held *inter-alia* that:

"Delay even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken. Those who comes to courts of law, must not show unnecessary delay, in doing so, they must show great diligence".

From the above discussions and relevant authorities, the learned advocate for the respondent concluded by stating that this application has no merits and prayed the same be dismissed with costs.

I have considered the rival submissions from both parties and perused the records. In essence, and as noted above the applicant's thrust is to be granted with enlargement of time within which to file his appeal out of time. Through the affidavit deposed by him, the applicant has tried as much as he could to explain the reasons for delay. For instance, at paragraph 8 of the affidavit, the applicant deposed:

"THAT, I, the Applicant did receive the copy of judgment and decree from the said Tribunal on 8/12/2021, though it was certified as true copy of the original

on 6/12/2021. A copy of Judgment and decree is herewith annexed and marked "E3".

As correctly submitted by the learned advocate for the respondent, this application was lodged in court on 29/12/2021, that means the applicant delayed to file his appeal for about 17 days after expiry of 45 days which ended on 12/12/2021. On perusal of court record (pleadings), I found nowhere in his submissions accounting for this long delay. As there is no sufficient explanations as to why the applicant delayed to file his appeal within the prescribed period of time and taking into account that he was availed with the copies of judgment and decree on 8/12/2021, I tend to agree with the argument advanced by the learned advocate for the respondent that the settled principles in the cases of **Registered Trustees of Khoja and 12 Others and Vodacom Foundation** (Supra) which laid down the threshold to be considered and adhered to by the applicant when applying or requesting the court to enlarge time within which to file his or appeal out of time. Now coming to the circumstance surrounding this case, I am satisfied in my mind that the applicant did not meet these three-tests. Therefore, as findings of this court divulges that the applicant has failed to account for the delays of 17 days, and even failed to point out any irregularities in the trial tribunal's judgment and the purported medical documents or reports relied on by him does not bear any name of the applicant, then in my view it remains nothing of assistance by this court other than placing reliance on the principles developed by our Apex Court as hinted above.

That said and done, I find no merit on this application. Consequently, the application is hereby dismissed with costs. **It is so ordered.**

DATED at MOROGORO this 12th day of August, 2022.



M. J. CHABA

JUDGE

12/08/2022

Court:

Ruling delivered at my hand and Seal of the Court in Chamber's this 12th day of August, 2022 in the presence of the applicant who appeared in person and Mr. Obasi Shabani who represents the respondent (reported sick).


M. J. CHABA

JUDGE

12/08/2022

Court: Right of the parties fully explained.


M. J. CHABA

JUDGE

12/08/2022

