

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

LAND APPEAL NO. 35 OF 2019

MUSSA A. MSASU.....APPELLANT

VERSUS

MARIAM MONKO.....RESPONDENT

(From Ruling of Singida District Land and Housing Tribunal, Sululu-Chairman)

Dated 25th day of January, 2017

In

Misc. Land Application No.92 of 2016

.....

JUDGMENT

9th August & 9th September, 2022

MDEMU, J.:

The Appellant herein moved the District Land and Housing Tribunal of Singida (the DLHT), in Land Application No.92 of 2016, so that he be granted extension of time to appeal to that tribunal challenging the decision of Ilongero Ward Tribunal. The said Ward Tribunal declared the Respondent herein Mariam Monko the rightful owner of the suit land located at Ilongero, in Land Application No.23 of 2015. The basis of refusal of the Appellant's application for enlargement of time to appeal to the DLHT was want of

sufficient cause. Aggrieved by that decision delivered on 25th of January, 2017, the Appellant filed the following three grounds of appeal:

- 1. That, the District Land and Housing Tribunal erred in law and fact to ignore and dismiss the prayers and evidences tendered by the Appellant herein whom it his prayers to file an appeal out of time and stay of execution of the decision of Ilongero Ward Tribunal stated that, he was prevented by health problems whereby tendered all genuine and original sick sheets from recognized hospital he was attending.*
- 2. That, the District Land and Housing Tribunal erred in law and fact to deliver a ruling in favour of the Respondent herein and unreasonably opining that, it could not be possible for the Appellant to get ill after the judgment and why it was not before the judgment or any other time while sickness is something which a person never plan.*
- 3. That, the District Land and Housing Tribunal erred in law and fact to dismiss the Appellant prayers by only*

counting the days in which he attended to the hospital to get treatment and say that there are only 14 days he attended in hospital out of 45 days which is appealable time so he was negligent, while unreasonable forgetting to consider that human body while sick can bring the sick person to need some rest for good recovery and some treatment can cause the sick to fatigue something which happened to the Appellant herein with regard being aged.

On 9th of August, 2022, the Appellant appeared before me arguing the appeal which was heard ex-parte after the Respondent failed to appear on being served twice. The Appellant therefore asked to be heard alone, adding another reason that, even in application for review before this court, the application was heard ex-parte on the same grounds.

Given the floor, the Appellant first asked this court to adopt his grounds of appeal filed forming part of his submissions. He thereafter faulted the reply to the grounds of appeal filed by the Respondent to be an afterthought. The reason according to him was that, he was in occupation of the suit land since 1958. He added that, he was allocated that land by his father and

since then, he was in occupation of the land to date. He was wondering therefore how could the Respondent purchase the land which he was residing and elected some structure therein. In those observation, he asked me to allow the appeal.

As stated above, the appeal was heard ex-parte. It is to say, it is not automatic that the door towards allowing the appeal is open to the Appellant. The evidence on record will guide as to whether or not the appeal is meritorious. Going to the three grounds of appeal, there is only one contentious issue hinges on whether, the Appellant advanced sufficient cause for failure to appeal in time to the DLHT. The grounds of appeal therefore will be argued as one.

It is trite law that, for the Court to exercise its discretion power to enlarge time to appeal or to file an application, there must be sufficient cause advanced by the person intending the Court to exercise that discretion power. See **Mumello v. Bank of Tanzania (2006) E.A 227; Lyamuya Construction Company Ltd vs. The Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010**(unreported), just a few to mention. Did the Appellant herein advanced sufficient cause to the DLHT?

I have perused the application and an affidavit in support thereof for enlargement of time filed to the DLHT. Let the affidavit thereto in paragraphs 2, 3 and 4 speak of itself as hereunder:

2. *That, I was not able to appeal in time because during the conduct of trial, and after the judgment was passed, I became sick and required to report to hospital time after time for treatment (I hereby attach the copy of hospital records marked M1)*
3. *That, in the event procedural rule could be allowed to take substantial justice, I will bound to suffer irreparable loss if I will be not given leave to appear and defend the suit.*
4. *That, in the event my application is granted, I am sure that my case in the resultant suit has overwhelming chances of success.*

The learned trial Chairman dully considered these grounds and ruled out to be an afterthought. In his ruling, and as complained by the Appellant in his grounds of appeal, the learned chairman could not see the reason as to why the Appellant become sick just a day after the decision of the Ward

Tribunal of Ilongero, thus planned to be sick. Let the ruling speak of itself at page 4 as hereunder:

Having considered the submissions from both sides, the only issue before me to be determined is whether the applicant has advanced good ground for delay to file the appeal before this tribunal. As said earlier, the applicant had 31 clear days in which he did not attend the health centre. He was not admitted but he was outpatient department. In that regard, he could use those days to file an appeal before this tribunal. Moreover, the applicant's sickness seems as if it was planned game as he started becoming sick one day after delivery of the judgment of the Ward Tribunal Ilongero. I had to ask myself why not behind 10/3/2016 when the matter was before the ward tribunal for determination?

Reading the language of this ruling, I think the duty of the learned trial magistrate was to determine the extent to which the affidavit of the Appellant herein establishes the so called sufficient cause for enlargement of time. As seen in paragraph 2 of the affidavit, the Appellant stated to contract sickness in the cause of trial and after delivery of the decision at

Ilongero Ward Tribunal. As the Learned Chairman scrutinized medical prescriptions, his perhaps would have been that, the Appellant did not account for each day of the delay and not to rule out that he planned to be sick after delivery of the decision. This kind of reasoning by the learned trial chairman lacks leadership. Given the intervals the Appellant attended in hospital as an outpatient, it was not expected to attend daily. It would have been on appointment, the reason, in my view, for the following intervals: 12/3/2016; 13/3/2016; 14/3/2016;15/3/2016; 18/3/2016; 23/3/2016; 24/3/2016; 25/3/2016; 26/3/2016; 27/3/2016; 15/4/2016; 21/4/2016 and 2/5/2016.

According to the record, the decision of Ilongero Ward Tribunal got pronounced on 10th of March, 2016. Right to appeal explained to parties was within forty-five (45) days which therefore expired on 25th of April, 2016. As the Appellant was sick all through from 12th of March to 2nd of May, 2016, time to appeal on that stance expired when the Appellant was sick. In the circumstances of this case, it was odd for the learned Trial Chairman to design his analysis such that, the period within which the old man Appellant was not attending in hospital could have been deployed to process the appeal. Had the learned trial Chairman considered these facts, would have

concluded that, the Appellant accounted for days of the delay hence a sufficient cause to enlarged time.

On that stance, this appeal is hereby allowed. Time to appeal to the DLHT for Singida is extended for forty-five (45) days from the date hereof. It is ordered accordingly.



Gerson J. Mdemu

JUDGE

09/09/2022

DATED at DODOMA this 09th day of September, 2022



Gerson J. Mdemu

JUDGE

09/09/2022.