

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY AT ARUSHA

MISC LAND APPLICATION NO.77 OF 2021

(C/f Land Revision No. 3 of 2020 at the High Court of Tanzania at Arusha, Originating from Application No. 127 of 2021 at the District Land and Housing Tribunal at Arusha)

ANDREA NDEWARIOAPPLICANT

VRS

THE REGISTERED TRUSTEE OF THE APOSTOLES

OF JESUS.....1ST RESPONDENT

LAMECK JOHN KAAYA.....2ND RESPONDENT

FIRST WORLD INVESTMENT.....3RD RESPONDENT

RULING

Date of last Order: 27-7-2022

Date of Ruling: 15-9-2022

B.K.PHILLIP,J

This Ruling is in respect of an application for extension of time for filing an application for leave to appeal to the Court of Appeal of Tanzania. The application is made under section 11(1) of the Appellate Jurisdiction Act supported by an affidavit sworn by the applicant. The learned Advocate, Colman Mark Ngalo filed a Counter affidavit in opposition to the application for 1st and 3rd respondents. The matter proceeded ex-parte against the 2nd respondent since he neither filed a Counter affidavit nor entered appearance in Court despite being served with the summons to appear in Court. At the hearing of the application the learned Advocate

Macmillan F. Makawia appeared for the applicant whereas Ms. Neema Oscar appeared for the 1st and 3rd respondents.

The application was heard viva voce. Referring to the contents of the affidavit in support of this application, Mr. Makawia submitted that the applicant's delay in filing the application for leave to appeal to the Court of Appeal was due to the fact that he was attending his sick mother. He went on arguing that the applicant annexed to his affidavit relevant documents to support his assertion that his mother was sick. He was of the view that the reason adduced by the applicant is sufficient move this Court to grant the extension of time sought by the applicant. He cited the case of **George Timothy Mwaikusa Vs National Microfinance Bank Plc, Misc Application No.41 of 2020** (unreported), to cement his argument.He prayed this application to be granted.

In rebuttal, Ms. Oscar, submitted that the applicant has not adduced sufficient reason for the delay in filing the application for leave to appeal. She contended that the contents of the documents annexed to the affidavit in support of the application are contradictory in the sense that the name of the patient in the two documents annexed to the applicant's affidavit are different .The first document indicates the name of the patient as Alilio Ndelilo Mungure whereas in the second document the patient's name is Alilio Jacob Isanga. In addition, she pointed out that the applicant did not state her mothers' name in his affidavit.

Moreover, Ms. Oscar argued that the documents annexed to the applicant's affidavit show that one Alilio Jacob Isanga attended to Arusha

Lutheran Medical Center on 19th August 2021 whereas the impugned decision was delivered on 27th August 2021. She insisted that even if it is assumed that the said Alilio Jacob Isanga is the applicant's mother, the fact that she was sick on the 19th August 2021 has nothing to do with the delay in filing the application for leave to appeal against the impugned decision which was delivered later, on the 27th of August 2021. Also, she pointed out that this application was filed on 6th October 2021, that is more than 38 days from the date of impugned decision and the said days of delay have not been accounted for.

Further, it was Ms. Oscar's argument that the assertion made by the applicant in his affidavit that he was running short of money is not a good reason for delay. She cited the case of **Ally Mtumbuka Vs Omary Limbimungu, Misc Civil Application No.4 of 2007 (2008) T.L.R 44**, to cement her arguments. Also, she was of the view that since the applicant managed to file a notice of intention to appeal on 17th September 2021 there is no good reason why he did not instruct the same advocate who filed the notice of intention to appeal to file the application for leave to appeal to the Court of Appeal timely. In conclusion of her submission Ms. Oscar, invited this Court to dismiss this application with costs for lack of merit.

In rejoinder, Mr. Makawia submitted as follows; that the documents annexed to the application indicates that the applicant's mother is 94 years old. Thus, due to her age she was unable to recall her names correctly. By the time the impugned decision was delivered the applicant was busy assisting her sick mother. The delay in this matter is not

inordinate. The notice of intention to appeal was filed by the learned advocate as a matter of practice and prudence. He beseeched this Court to grant this application.

Having perused the Court's records and analyzed the submission made by the learned Advocates, let me start by reiterating the well known position of the law as far as applications of this nature are concerned, that is, the applicant has to account for the each day of delay. [See the case of **Bushiri Hassan Vs Latifa Lukio Mashayo, Civil Application No. 03 of 2007** (unreported)]. There is no hard and fast rules on what amounts to sufficient cause for delay. However, our courts have established some guiding factors in making determination on whether or not the reasons for delay adduced by an applicant are sufficient to move the Court to grant the extension of time sought. The following are among the factors established by our Courts;

- i. The Applicant must account for all the period of delay.
- ii. The delay should not be inordinate.
- iii. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

[See the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 02 of 2010**, (unreported)]

The Court's record reveal that the impugned decision was delivered on 27th August 2021. The documents annexed to the affidavit in support of this application shows that one Alilio Jacob Isanja attended at Arusha

Lutheran Medical Center on 19th August 2021 as an outpatient. The applicant's affidavit discloses two reasons for delay in filing his application for leave to appeal to the Court of Appeal, to wit ; He was taking care her mother who was sick and was running short of money since he had to spend money for the treatment of his mother. However, in his affidavit the applicant did not disclose his mother's name.

From the foregoing two things have to be noted; One, as correctly pointed out by Ms. Oscar, the applicant did not state his mother's name in his affidavit. In my opinion that omission is fatal because the connection between the patient by the name of Alilio Jacob Isanja / Alilio Ndelilo Mungure which appears on the documents annexed to the applicant's affidavit and the applicant has not been established. It was imperative for the applicant to state the name of his mother in his affidavit. It noteworthy that the submission made by Mr. Makawia is not evidence and does not form part of the pleadings. (See the case of **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Ltd Vs Mbeya Cement Company Ltd and National Insurance Corporation (T) Ltd , Civil Case No. 315 of 2000** and **Sac Profit Emerge Limited Vs Contract International Limited, Commercial Case No. 30 of 2012,** (both unreported)]. The submission made by the parties / Advocates are supposed to be based on the what is pleaded .Two, the impugned decision was delivered on 27th August 2021. The document annexed to the application indicates that one Alilio Jacob Isanjo attended to hospital on 19th August 2021 only. Thus, even if, for the sake of arguments it is true that the said Alilio Jacob Isanja

is the applicant's mother, there is no any document in support of the applicant's allegation that his mother was sick from 19th August 2021 to 1st October 2021 as stated in the applicant's affidavit.

With regard to the applicant's allegation that he was running short of money, I wish to state outright that lack of money is a general excuse which can be averred by anybody. Thus, it cannot be a sufficient cause for delay. [See the case of **Alli Mtumbuka** (supra)].

In addition to the above, the case of **George Timonthy Mwaikasu** (supra) cited by Mr . Makawia does not support his arguments. In that case the Court dismissed the application for extension of time for lack of merit since the applicant failed to account for each day of delay. He provided general explanations that he was engaged in the burial services of the his late wife and thereafter he fell sick, and was receiving treatment from Kibiti Hospital but failed to provide documents to prove his assertion. Similarly, in this case the applicant has hopelessly failed to account for the days of delay from 27th day of August 2021 to the date of filing this application.

In the upshot, it is the finding of this Court that the applicant has failed to account for the days of delay as required by the law. Thus, I hereby dismiss this application with costs.

Dated this 15th day of September 2022



B.K.PHILLIP

JUDGE.