

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. LAND APPLICATION NO.19/2022

*(Arising from Land Appeal No.28 of 2021 of the Bukoba District Land and Housing Tribunal
and Land Case No.1 of 2021 of Bwanjai Ward Tribunal)*

PASKAZIA WINCHSLAUS BUHEKERAAPPLICANT

VERSUS

VERDIANA MASHURANO BUHEKERA..... RESPONDENT

RULING

*29/08/2022 & 23/9/2022
E. L. NGIGWANA J.*

The applicant among other reliefs, prays for this court, to grant her an extension of time within which to file an appeal in this court to challenge the decision by the District Land and Housing Tribunal (DLHT), henceforth "the first appellate tribunal" in Land Appeal No. 28 of 2021 which was handed down on 14th December, 2021.

The record has it that the said decision of the appellate tribunal confirmed the judgment of the Bwanjai Ward Tribunal henceforth "the trial tribunal" in Civil Case No. 1 of 2021 which was decided in favour of the respondent. Aggrieved with both concurrent findings of the lower tribunals, the applicant therefore seeks to resort the matter as second appeal in this court. However, she has found herself out of time to pursue her intended goal, hence the current application to have the time extended.

As usual, the current application is brought by way of chamber summons supported by the founding affidavit deposed by the applicant

Paskazia Winchslaus Buhekera. Paragraph 6, 7, 8 and 9 are relevant as they demonstrate the reasons for delay and as well explains why the extension of time should be granted. The counter affidavit of the respondent deposed and filed by the respondent's counsel Lameck John Erasto on 14th June, 2022 challenges the facts in the disclosed above paragraphs. Since the duo affidavits were adopted in their parties' submission, I will therefore go straight to recapitulate what parties elaborated in their written submissions.

In the applicant written submission, it was elaborated that the decision of the appellate tribunal which is sought to be challenged, was delivered on 14th December, 2021 and on 28 the day of December, 2021 the applicant wrote a letter to request for the copy of the judgment which she was supplied and received it on 8th February, 2022 after it was certified and ready for collection on 7th February, 2022. That when she received the same, 57 days had elapsed and therefore remained with 3 days to catch 60 days required to file an appeal in this court. It was the applicant's argument that the said 3 days remaining were not enough and reasonable for the applicant to have made research and sought for legal assistance to prepare a lucid petition of appeal to this court.

The applicant contended that when she was about to undertake the preparation of the appeal, she could not complete the exercise as on 9th February, 2022 she got sick and she recovered and felt better on 16th February, 2022. That for the whole period she became sick, she was undergoing local medication and that as she was already out of time, she came to file this application for extension of time on 23rd February 2022.

That, from 16th February, 2022 when she recovered from sickness to 23rd February, 2022 when she filed the current application, 7 days had elapsed of which according to the applicant cannot be said to be inordinate delay under the circumstance surrounding this case at hand. To bolster her stance, she referred me the case of **Hamis Mohamed (As the administrator of the estates of the late Risasi Ngwale Vs Mtumwa Moshi (As the administratrix of the estate of Moshi Abdallah**, Civil Application No. 407/17 of 2019 CAT at page 8 at page 10 of the ruling where the court stated that;

"After the latter application was struck out the Applicant took hardly a month to file the present application seeking for extension of time. In other words, the applicant was diligent all along to file an appeal."

As regards to sickness as a sufficient ground to have an extension granted, she referred to me a case of **Emmanuel R Maira versus The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010, CAT where it was held that;

"In my considered view this kind of situation coupled with the undisputed incapacitation by sickness, indeed provides good cause for the delay entitling the applicant to the orders sought because health matters in most cases are not the choice of human being and cannot be shelved and nor can anyone be blamed when they strike."

It was the applicant's argument that since the respondent failed to file a counter affidavit to dispute that the applicant was not sick, she therefore prayed this court to believe that the applicant was sick. He backed up her stance with the case of **Murtaza Alloo vs Egabert Kajuna**, Civil Application No. 3 of 2012. CAT where the court stated that where the

respondent does not dispute matters in the affidavit, it will be taken that the facts were not challenged.

Concerning the issue of illegalities, the applicant is of the view that the decision she intends to challenge is coupled with illegalities. Though she mentioned no such illegality, instead, she made a justification from Rule 3 of GN No. 312 of 1964 of the Civil Procedure (Appeals in Proceedings originating from Primary Courts) Rules 1963 together with case of **Ibrahim Zacharia and Mussa Mbakile versus Zubeda Selemani**, Misc. Land Case Application No. 9 of 2016 which says that if one applies for leave to appeal to the court of appeal he/she has to demonstrate the points for the attention of the Court of Appeal but the same should not to be included in the affidavit itself, instead, they would have been listed in the memorandum of the intended appeal annexed to the affidavit/application.

The applicant was of the view that she has established the illegality in the decision to be challenged. Thus, illegality is the good cause for extension of time. She cited the case of **Principal Secretary Ministry of Defence and Another versus Devram Valambhia** (1992) TLR 185, **VIP Engineering and Marketing LTD and Two Others versus Citibank Tanzania LTD**, Consolidated Civil Reference No. 6, 7 and 8 of 2006.

In the reply submission, advocate Lameck for the respondent was brief that the issue of sickness was totally a lie and he submitted that it is a cardinal principle of the law that the affidavit that is tainted with false statement had no legal value with the consequences of vitiating the entire application as it was held in a chain of authorities. He cited one of them being the case of **Robert S. Lova & Another versus Ministry**

of Natural Resources and Tourism & Another, Revision No. 742 of 2018. He added that, the alleged ailment of the applicant with measures of treatment by local herbs is novel and not backed up with concrete support.

That, there is no express clarification of the sickness which could not be cured by the hospitals to the extent of making the preference to the traditional healers. He substantiated his point that even if the applicant could have mentioned the proper medical treatment, she was bound to state to what degree the sickness affected her competence to pursue her rights in filing the appeal within time. He buttressed his argument by the case of **Shembilu Shefaya versus Omary Ally** (1992) TLR 245 where the court held that, there must be elaborative explanation in the affidavit the extent to which sickness prevented the litigant from taking a step in court.

He therefore distinguished the cited cases by the applicant to show circumstances where courts exercised their discretionary powers to extend time, that their facts were different from the facts of the case at hand where the supporting documents to satisfy the court that the applicant was sick are vital.

Furthermore, the respondent's counsel argues that the applicant admits that she had 7 days which had elapsed without filing the current application. That, there was no reason accounted for each day of delay as required by law. It was his conviction therefore that this court cannot exercise its discretionary powers to extend time in the circumstance.

Lastly, the respondent's counsel dismissed the applicant's reason of not mentioning the illegality available in the decision she seeks to challenge by basing on The Civil Procedure (Appeals in proceedings originating

from Primary Courts) Rules 1963 GN. No. 312 of 1964 that is the total confusion as the same is irrelevant to the current application which has nothing to do with the application for leave to appeal to the Court of Appeal of Tanzania hence the case of **Ibrahim Zacharia and Mussa Mbakile** (Supra) cannot come into play.

In rejoinder, the applicant made a long submission but he severally repeated that the respondent filed no counter affidavit and came with the new objection that the counter affidavit was not filed within 7 days as required by regulation 7 (1) (b) of GN No. 174 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003 hence he cannot be allowed to challenge issues of facts deposed in the affidavit.

Now, from what has been elaborated by parties in their submissions as well as what was deposed in the parties' affidavits, I believe now I have to determine whether this application has merit. In order to arrive at such a conclusion, it is the duty of the applicant at first place to demonstrate the sufficient cause to have the sought extension granted.

Conversely, it is also well settled that the sufficient cause 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. See decisions in the case of **Regional Manager TANROADS Kagera versus Rinaha Concrete Co. Ltd**; Civil Application No. 96 of 2007 CAT, (unreported) and **Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995)** TLR 200 and **Republic versus Yona Kaponda and 9 others** (1985) TLR 84.

Therefore, it is trite that there is no hard and fast definition of the term sufficient cause and the exercise of deciding to grant or refuse entirely rests on the discretion of the court to do so after judiciously examining the circumstances surrounding a particular case.

Before I venture on the merit of this application, I must state from the outset of this ruling that the argument by the applicant that the respondent filed no counter affidavit is baseless and unfounded as the respondent's counter affidavit is available in the court file and was filed on 14th June, 2022 and thus forms part of this record.

Again, the argument that the counter affidavit was supposed to be filed in 7 days as per regulation 7 (1) (b) of GN No. 174 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003 is a misconception as the said regulation does not apply to this court save to the District Land and Housing Tribunals. Moreover, the practice of this court has always been that; a party will file a counter affidavit after the service of the application has been effected to him/her. Hence the filed counter affidavit by the respondent is valid and forms part of this court's record.

I now revert to determine the merit of this application. I agree with the respondent's counsel that the applicant has failed to demonstrate the sufficient cause for delay for this court to exercise its discretion to have time extended due to the following reasons; **One**, the applicant obtained the copy of judgment in time but failed to file an appeal to this court. The reason for her failure according to her was due to sickness which took her from 9.02.2022 to 16.02.2022 almost 7 days and the respondent in his counter affidavit has disputed that the applicant was not sick. The applicant therefore was expected to depose in her affidavit

what kind of disease she was suffering and also attach documents in her affidavit to prove what kind of treatment she obtained. It is not enough to merely tell the court that she was sick and obtained local treatment.

Second, the applicant deposed that on 16.02.2022 she recovered and got better and she came to file the current application on 23.02.2022 a period of 7 days elapsed but she did not account each day she delayed to take prompt measures to file her current application. What was she doing in those clear 7 days? It is trite that each day of delay has to be accounted for as also rightly argued by the respondent's counsel, see also the case of **Bushiri Hassan versus Latifa Lukio Mashayo**, Civil appeal No. 3 of 2007 CAT (unreported) where it was emphasized that delay of even a single day has to be accounted for.

Third, I am inclined to agree with the respondent counsel that much as the factor of illegality is appreciated and applies as a good cause for extension of time but it is not enough to simply mentioning in the affidavit that that the decision to be challenged is coupled with illegality without disclosing in the affidavit of what that illegality is. Failure to disclose the complained illegality in the applicant's affidavit by the applicant, is as good as no illegality to be considered as sufficient cause for extension of time.

In the event, I am respectfully convinced that the applicant has failed to demonstrate sufficient cause to this court to warrant grant of extension of time consequently. The application is dismissed. Each party to bear its own costs.

It is so ordered.

Order accordingly.

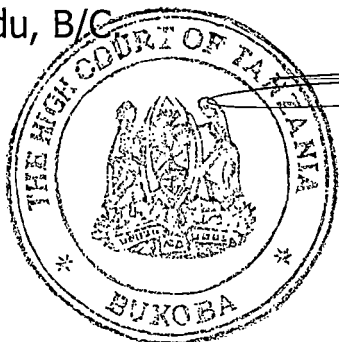


E.L. NGIGWANA

JUDGE

23/09/2022

Ruling delivered this 23rd day of September, 2022 in the presence of the Applicant in person, Ms. Erieth Barnabas, learned advocate for the respondent, Hon. E.M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C



E.L. NGIGWANA

JUDGE

23/09/2022