

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT ARUSHA**

LAND APPEAL NO. 05 OF 2021

(Originating from the District Land and Housing Tribunal for Arusha, Application No. 159 of 2011)

LOISHIYE SEEMBO 1ST APPLICANT

PAULO LOISHORWAK 2ND APPLICANT

Versus

PATRICK GEORGE RESPONDENT

RULING

5th October & 21st October 2022

Masara, J.

The Applicants have preferred this application under section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] craving for an extension of time to file an appeal in this Court against the decision of the District Land and Housing Tribunal for Arusha ("the tribunal"), in Application No. 159 of 2011 that was delivered on 16/11/2018. The application is supported by a joint affidavit of the Applicants. The Respondent opposed the application by filing a counter affidavit.

Brief facts of the dispute giving rise to this application as gleaned from the affidavits is that the Respondent successfully sued the Applicants in the tribunal seeking to be declared the lawful owner of a piece of land measuring 10 metres long and 8.5 metres wide, located at Engutoto

Ward, within Arusha City ("the suit land"). After hearing both parties, the tribunal allowed the application with costs. The tribunal chairperson found that the Respondent legally bought the suit land from the late Maria Paulo; thus, declaring the Respondent the lawful owner of the suit land.

The Respondent filed application for execution in the tribunal. The Applicants were served with the execution application and accordingly attended, but they did not file any reply thereof. The decision in respect of the execution application was delivered on 12/03/2021. In that ruling, the Respondents were ordered to give vacant possession of the suit land within 14 days and that in case they defied the order, the tribunal would appoint a court broker to execute the decree. It was further ordered that in case the exercise would be carried on by a court broker, the Applicants would be compelled to pay costs of the application as well as the execution process. The Applicants were aggrieved by the judgment and decree of the tribunal, they intended to appeal to this Court, unfortunately they found themselves out of time, hence this application.

On 10/08/2022 when the application came up for hearing, the Respondent was absent without notice. It was the Applicants' prayer and the Court accede that the application be disposed of through filing written submissions. The Applicants filed their submission as ordered. The

Respondent did not file his reply submission; hence, the application will be determined based on the Applicants' submission only. The Applicants had their submission drawn *in gratis* by Ms Francisca A. Lengeju, learned advocate from the Legal and Human Rights Centre-Arusha Legal Aid Unit. Submitting in support of the application, Ms Lengeju contended that the reasons for delay in filing the appeal are two-fold: First, the first Applicant fell sick and was admitted at Nkoaranga Lutheran Hospital for approximately 11 months due to stomach problems. After being discharged, he was required to attend regular check-ups from March, 2020 to November, 2020. Second, that the second Applicant had travelled to Singida from 20/04/2020 for work and returned back when the first Applicant was discharged from Hospital.

According to Ms Lengeju, extension of time can only be granted when it has been sufficiently proved that the delay was with sufficient cause. To reinforce her assertion, she referred me to the decision in the case of **Alliance Insurance Corporation Limited vs Arusha Art Limited, Civil Appeal No. 297 of 2017** (unreported). To determine what amounts to sufficient cause, learned advocate relied on the case of **Manager Tanroads Kagera vs Ruaha Concrete Company Limited, Civil Application No. 96 of 2007** (unreported). She asserted that since

the first Applicant was sick, the delay was with sufficient cause on the ground that sickness is a good ground for extending time. To support her contention, she further sought reliance on the decisions in **Emmanuel R. Maira vs The District Executive Director Bunda District Council, Civil Application No. 66 of 2020** and **Masulu Kazinga vs Christina Boniphace Sanyenge, Misc. Application No. 90 of 2021** (both unreported). She concluded by praying that the application be allowed.

In order to make an informed determination of this matter, I had to revisit the records availed to me through the affidavits by the parties, including the Applicant's written submission. There is no doubt that for the Applicants to succeed in this Application, they need to satisfy me that they had sufficient cause for the delay. To grant an extension of time is a discretion judiciously exercised by the Court. It is on that basis that I have to gauge the reasons advanced by the Applicants to see if they meet the test of "good cause".

The reasons for the Applicants' delay are stated in paragraphs 3, 4 and 5 of the Applicants' joint affidavit. For the first Applicant, it is stated that he was sick for 11 months after being diagnosed with stomach problems. That he was attended and admitted at Nkoaranga Lutheran Hospital, where he had a stomach surgery and was discharged in March, 2020.

Further, that he was required to attend Nkoaranga Lutheran Hospital and Oloirieni Community Clinic for regular check-ups until November, 2020.

Unfortunately, there is no evidence to support the fact that the first Applicant was attended to or admitted at Nkoaranga Lutheran Hospital. Annexures B1 and B2 are radiology request form dated 20/06/2020; radiology image print-out of 20/06/2020 and two receipts showing payments made by the first Applicant for the serviced received at Olorien Community Clinic. Both receipts are dated 20/06/2020. All the documents referred above were received at Oloirien Community Clinic.

In as much as I agree with Ms Lengeju that sickness amounts to sufficient ground for the delay, the said illness must be proved to have contributed for the delay. This position was reaffirmed by the Court of Appeal in the case of **Juto Ally vs Lukas Komba and Another, Civil Application No. 484/17 of 2019** (unreported), where it was held:

*"Indeed, she has also not explained how her illness contributed to the delay **as the medical evidence she attached to her affidavit concerns the period specifically for the dates when she attended to hospital on 8th October, 2016 and 19th June, 2016. Besides, there is no indication that on those particular dates she was admitted and for how long. The only indication is that she attended at Mwananyamala Hospital as an outpatient***

where she was attended and allowed to go to her residence on both occasions.”(Emphasis added)

In the application under consideration, there is no evidence proving that the first Applicant was attended or admitted at Nkoaranga Lutheran Hospital as alleged. The only available evidence is that he was attended to at Oloirien Community Clinic on 20/06/2020, and there is no suggestion that he was admitted or operated upon. Therefore, the contention by Ms Lengeju that the delay was due to the first Applicants' sickness is not substantiated.

Even if I was to agree with the Applicants' contention that the first Applicant was attending medication until November, 2020 (which is not the case), still the instant application was filed on 18/01/2021. The period between November, 2020 and the time the application was filed, which is more than a month, is not accounted for. Nothing has been said in the affidavit nor in the submission regarding that period. In extension of time applications, the Applicant must account for each day of the delay. In **Bushiri Hassan vs Latifa Lukio Mashayo, Civil Application No. 3 of 2007** (unreported), it was held *inter alia* that: "*Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps are to be taken.*"

It follows that the 1st Applicant has failed to account for the period of the delay. With regard to the second Applicant, Ms Lengeju stated that the he had travelled to Singida for “work” and returned back when the first Applicant was discharged from hospital. In the first place, the said “work” was not disclosed to Court and the time he returned back was undisclosed. Second, the joint affidavit shows that the second Applicant travelled to Singida since 20/04/2019 as stated under paragraph 4 thereof. However, the bus ticket relied on as evidence (Annexure C1), shows that the second Applicant travelled to Singida on 07/5/2019. The evidence relied upon contradicts what is stated in the joint affidavit, rendering such evidence unworthy of belief. It should further be noted that the second Applicant could initiate the appeal alone in the absence of the first Applicant who they alleged sick. Furthermore, the results of the case were known to him, why would he opt to travel to Singida instead of preferring an appeal against a decision he was unhappy with. That shows lack of diligence on his part.

The only plausible conclusion this Court makes at this juncture is that the Applicants preferred this application merely to frustrate the execution application that was pending in the tribunal. At any rate, their inadvertence and sloppiness cannot be condoned.

The Applicants have failed to prove that the delay was due to the first Applicant's sickness. They have equally failed to prove that it was due to the second Applicant's travel to Singida, which by the way would not exonerate him from the requirement of meeting the time limits stipulated. Generally speaking, they have failed to account for the period of the delay.

In the event, the Applicants have failed to adduce sufficient cause for the delay. The application is devoid of merits. It stands dismissed accordingly. Ordinarily, the Respondent would be entitled to costs, but having decided not to file his reply written submission, I desist from making an order of costs.

Order accordingly.




Y. B. Masara

JUDGE

October 21, 2022