

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

AT ARUSHA

MISCELLANEOUS LAND APPLICATION NO. 73 OF 2022

(C/F High Court of Tanzania at Arusha (PC) Civil Appeal No. 20 of 2020 and Karatu District Court, Civil Appeal No. 15 of 2020, Originating from Karatu Primary Court in Civil Case No. 40 of 2020)

ESTER MANONGA.....APPELLANT

VERSUS

ELIAKIMU LULU.....RESPONDENT

RULING

13/09/2022 & 08/11/2022

GWAE, J

The applicant, Ester Manonga exhibited her grievances towards the judgment and decree of Karatu District Court via Civil Appeal No. 15 of 2020 delivered on 23rd day of September 2020. Subsequently, she filed an appeal to this court vide PC. Civil Appeal No. 20 of 2020 however her appeal was dismissed by the Court (**Gwae, J**) on 28th October 2021 for the applicant's continuous non-appearance.

Following the dismissal order of the court, on 15th day of June 2022 the applicant brought this application for extension of time in order to file an

application for setting aside the dismissal order of her appeal to the court. This application is supported by the sworn affidavit of the applicant whose reasons for delay is sickness substantiated by a medical chit appended therein and efforts to look for an advocate to take necessary steps against the dismissal order.

On the other hand, the respondent, Eliakim Lulu filed his counter affidavit resisting this application by stating that the applicant had never been sick as she had been in usual activities regularly. He further stated that the purported medical chit is not genuine merely because it does not contain headed paper, name and signature and stamp duty of the medical officer who attended the applicant. The respondent went on stating through his counter affidavit that, if at all the applicant was sick for that period of five months she ought to have notified the court of her illness.

On 13th day of September 2022, Mr. Metusela, the learned counsel appeared representing the applicant while the respondent appeared in person, unrepresented. The applicant's advocate reiterated that his client was truly sick and could not even walk.

Praying for dismissal of this application, the respondent seriously stated that, the applicant has manufactured reasons for her delay and that she did not account for the delay from October 2021 till when she filed this application.

In his brief rejoinder, the applicant's counsel stated that the applicant has accounted for the days of delay from October 2021 as she was still at home and yet to recover.

Having outlined the parties' submissions as herein above, the court is therefore duty bound to carefully ascertain as to whether the applicant has demonstrated good cause for her days of delay from when her appeal was dismissed (28/10/2021) to the date of filing this application (15/6/2022). It is general principle that, in an application for extension of time the applicant has to show good or sufficient cause and the court must exercise its statutory discretion to either grant the application or refuse it judiciously. My holding is fortified by the judicial precedent in the case of **Livingstone Silay Haru vs. Collifred Temu** [2002] TLR 268, that: -

"It is discretion on the part of the court to grant the extension of time depending on sufficient reason being given to explain the delay"

In this instant application, the applicant is found strongly lamenting to have fallen sick and that, she subsequently attended medication at Slahhamo Dispensary on 3rd June 2021. I am sound of the principle of the law that, sickness may constitutes a sufficient cause justifying the court to enlarge time to file an appeal or file an application to set a dismissal order or leave to appeal out of the prescribed period. However, such assertion must be, in my view, substantiated by cogent evidence in order to avoid mere assertions or excuses based on the ground of illness. The Court of Appeal of Tanzania in **Emmanuel R. Maira vs. The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010 held that, health cases are not the choices of human beings and they cannot be shield and no one can be blamed.

Examining the medical chit dated 3rd day of June 2021 appended in the application, I have observed that, the same bears the rubber stamp of the said dispensary as opposed to the respondent's assertion and it indicates that, the applicant was medically instructed to have bed rest for five months. However, the copy of medical chit is questionable since the same is evidently not signed by any medical officer as correctly asserted by the respondent nor name of the medical officer who attended her is indicated. I am therefore

of the view that, even if the applicant was medically instructed so, yet she could take reasonable steps to ensure that, the court was duly notified to that effect taking into account there is no tangible evidence establishing that, the applicant was frequently attending medication.

If I were to be convinced by the applicant that she was unable to walk from 3rd June 2021 till the period of five months yet I could not decide in her favour. I am saying so for an obvious reason that nowhere the applicant has accounted for her delays after expiry of five months' period that is from 3rd December 2021 to 6th day of May 2022 when she was dully summoned by Karatu Primary Court which notified her of the dismissal order of the court. The delay at hand is certainly inordinate delay. In **Loshilu Karaine and three others v. Abraham Melkizedeck Kaaya** (Suing as a legal representative of Gladness Kaaya), Civil Application No. 140/02/ of 2018 (unreported) where at page 12, the Court of Appeal of Tanzania held that;

"That, unexpected and unforeseen event definitely needed re-organization and, to be fair, period of eleven days cannot be said to be inordinate in preparing and lodging the present application".


As earlier explained, the delay of more than five months without explanation cannot be considered in her favour on the mere assertion that, it was just because of the said medical instruction followed by continuous illness. The applicant's delay for more than five months' period is inevitably inordinate. Therefore, this case is distinguishable from the case of **Loshilu** (supra) cited above. The applicant is therefore unhesitatingly found to have absolutely failed to account for her days (more than 150 days) of delay from 3rd December 2021 to 6th May 2022 leave alone of her failure to account for each day of delay (See the court's decision in the case of **Mbogo vs. Shah** (1968) EA).

Basing on the foregoing reasons, the applicant's application is hereby dismissed for want of sufficient cause. The applicant shall bear the costs of this application.

It is so ordered.

DATED at ARUSHA this 8th day of November, 2022




M. R. GWAE
JUDGE
08/11/2022