

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 08 OF 2021

VILLAGE CHAIRMAN NINGAAPPLICANT

VERSUS

SOTELI KANYANYA.....RESPONDENT

(Originating from Application No. 4 (B) of 2019 of the District Land and Housing Tribunal for Rukwa at Sumbawanga)

RULING

Date of Last Order: 05/09/2022.

Date of Ruling: 09/ 11/ 2022

NDUNGURU, J.

The applicant namely Village Chairman Ninga has lodged this application under section 14 (1) of the Law of Limitation Act, Cap 89 RE 2019 and section 41 (2) of the Land Dispute Courts Act, Cap 216 RE 2019 seeking for an extension of time within which to file an appeal against the decision of the District Land and Housing Tribunal of Rukwa (the District Tribunal). The application is supported by an affidavit sworn, drawn and filed by Pius Benedicto. Chairman of Ninga Village.

In opposing the application, the respondent filed counter affidavit sworn by himself.

When the application was called on for hearing, applicant was represented by Mr. Peter Malendechea – State Attorney whereas respondent appeared in person, unrepresented.

The applicant through representation of Mr. Malendechea prayed the court to adopt his affidavit to be part of this application.

In supporting this application Mr. Malendechea – State Attorney submitted that at paragraph 3 of the affidavit, the reason for delay to appeal was due to the fact that the applicant was not supplied with the copy of judgement on time. Further he submitted that the judgement was delivered in the absence of the applicant. That the applicant wants to test the legality of the respondent administration of estate.

In reply, the respondent submitted that it is true that the judgement was delivered in the absence, the fact that the judgement date was fixed and known to him his absence could not prohibit the court to deliver judgement, thus the ground is devoid of merit.

Further, the respondent submitted that if the respondent's locus stand was doubtful the respondent had to object it during trial, for time being it cannot be the ground for extension of time. He submitted that the copy of judgement was read it was for the applicant to correct it. He prayed for the application be dismissed with costs because the applicant has not shown sufficient cause.

In rejoinder, Mr. Malendechea stated that it is a right forum to raise the issue of locus stand as did not arise at the trial as parties were laymen. He concluded that the applicant was not supplied with the copy of judgement on time.

I have considered the submission by both parties, the applicant's affidavit and counter affidavit by the respondent, I am of the considered view that, in order for the application to succeed, the applicant must furnish reasonable and sufficient reason/cause which made him to fail to file an appeal within the time limit which was provided by law.

It is well settled that the sufficient cause sought 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. This court may for good and

sufficient reason/cause extend time for filling an appeal either before or after such period of sixty days has elapsed.

The applicant is alleging that he was not supplied with the copy of judgement on time but nothing was produced to substantiate his averment.

It is from the affidavit of the applicant that he was the respondent in Land Application No. 4 (B) of 2019 at the District Land and Housing Tribunal for Rukwa which was delivered in favour of the respondent on 18th day of November 2020 and that he did not appeal on time as the copy of judgement was not supplied on time and said the judgement was delivered in the absence of the applicant, and he informed this court to have attached a letter of absence., however my looking unto it I found nothing of it in the record.

However, in paragraph 5 the applicant is trying to rise the issue of illegality when he averred that the applicant wants to test the legality of administration of estate by the respondent, also legal capacity of the parties and non-joinder of District Executive Director, however his ~~averment appears to have no assurance. For the issue of illegality to be~~ considered by the court to grant extension of time the same has to be on

the face of the record as per the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010, unreported. As to legal capacity of the parties, the respondent in his application before the trial tribunal stated to have given the suit land by his father in a year 1993 no one disputed such fact and on the party of the appellant, Ninga Village Council represented by Village Chairman the suit was filed before the Written Laws Misc. Amendment Act, No. 1 of 2020, where introducing section 24, 25 and 26 which amended section 6 of the Government Proceedings Act by introducing subsection 3 and 4. The new subsections reads:

"(3) All suits against the Government shall, upon the expiry of the notice period, be brought against the Government, ministry, government department, local government authority, executive agency, public corporation, parastatal organization or public company that is alleged to have committed the civil wrong on which civil suit is based, and the Attorney General shall be joined as a necessary party.

~~(4) Non-joinder of the Attorney General as prescribed under subsection (3) shall vitiate~~

"The delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."

In the premises, I find that the applicant has not given justifiable and good reason for this court to exercise its discretionary power to grant the application as he failed to account each day of delay.

For that reason, the application for extension of time to this court is hereby dismissed with no as to costs.

Order accordingly.



D. B. Ndunguru

D.B.NDUNGURU

JUDGE

09. 11. 2022

Date - 10/11/2022

Coram - Hon. M.S. Kasonde - DR

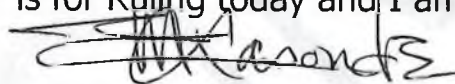
Appellant - Absent

Respondent - Present in person

B/C - Zuhura

Respondent: The matter is for Ruling today and I am ready.

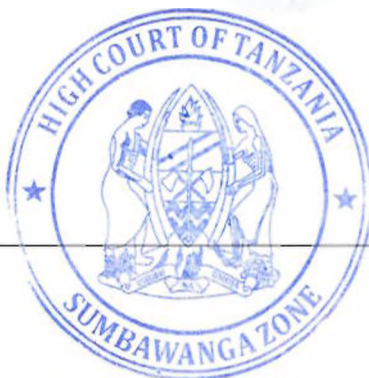



M.S. KASONDE

DEPUTY REGISTRAR

10/11/2022

Court: Ruling delivered this 10th day of November, 2022 in the presence of the Respondent, who appeared in person, and in the absence of the applicant. .




M.S. KASONDE

DEPUTY REGISTRAR

10/11/2022