

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TABORA
LAND APPEAL NO. 22 OF 2020**

(Arising from Misc. Land Application No.32 of 2020 at Tabora
District Land and Housing Tribunal)

WARIDA SAIDI NG'OMBE.....APPELLANT

VERSUS

NASSORO SHABANI MALOGI.....RESPONDENT

JUDGEMENT

Date of Last Order: 28/10/2022

Date of Delivery: 13/12/2022

AMOUR S. KHAMIS, J:

This is an appeal against the Ruling of the District Land and Housing Tribunal for Tabora in Misc Land Application No. 32 of 2020.

At the Trial Tribunal, the appellant filed an application for extension of time to file appeal against the decision of Ilolangulu Ward Tribunal delivered on 14/6/2019.

The first Appellate court upon hearing the application for extension was satisfied that there were no sufficient grounds to grant the applicant's application and the same was dismissed.

The appellant being aggrieved by the said decision has now lodged this appeal on the following grounds: -

- 1. That the Chairman of the Tribunal erred both in law and facts in ignoring the reasons of the Appellant that she attended her sister at the hospital and daily caring of her due to her serious problem of HIV infection and other complication diseases which accompanied HIV affected person.*
- 2. That the Learned Chairman of the Tribunal erred in law for failure to take into consideration that the Appellant has got strong issue of lack of jurisdiction by Ward Tribunal in adjudicating the, matter which was before it something that led to the failure of justice, on his side.*

Pursuant to the order of this Court the appeal was disposed by way of written submissions. I am grateful to both parties for complying with the schedule set and file their submission on time.

In support of the 1st ground of appeal, the appellant argued that she failed to file her appeal on time because, she was attending hospital to help her sister one Azimio Said Ngómbe who was suffering from HIV AIDS so she attending every month so as to take ARV PILLS.



She alleged that her sister was in bad condition so she needed her assistance to take her to hospital.

The Appellant also argued that she was also sick attending Furaha Medical Laboratory on 20th February 2020 until she got fit and decided to file application for extension of time to file appeal at Tabora District Land and Housing Tribunal.

It is the Appellant's submission that the Chairman of the District Land and Housing Tribunal wrongly failed to consider the fact that the Appellant raised strong issue on lack of jurisdiction by the Ward Tribunal in adjudicating the matter which was before it.

She argued that the matter of jurisdiction is a mandatory requirement, that is if not followed then the whole proceedings shall be fatal and unaccepted in the eyes of law. Ascertainment of jurisdiction is basic requirement. It goes to the very root of the case.

She referred this court to the case of **Ndekeja Kashinje Vs. Mboje Masunge, HCT at Tabora Land Appeal No. 11 of 2018(Unreported).** and **Article 13(6) (a) of the Constitution of United Republic of Tanzania Cap 2 of the Law of TANZANIA 1977** as Amended from time to time.

The Appellant submission was strongly rebutted by the respondent who submitted that the Appellant did not show effort for more than 270 days yet awoken by afterthought when the respondent started to make follow up for execution. He argued that the Appellant was supposed to account for each day of delay. He cited the case of **Humprey Jomo Tumbo Vs. Jane Elias Tumbo (unreported) v High Court of Tabora in Misc. Land Application No. 18 of 2019.**

Responding to the 2nd ground of appeal, the respondent argued that the same lacks merit because the value of the suit land which is ¼ acre was only Tshs. 500,000 as per market price of that time the case was there at the Ward tribunal. he therefore argued that the ward Tribunal had jurisdiction to entertain the matter before it.

he prayed for the court to dismiss this appeal for want of merit.

Having considered the submission of both parties together with the record pertaining this appeal. The only issue for determination is whether this appeal has merit.

It is a well-established principle of the law that, extension of time will only be granted upon showing good cause. Section 14(1) of the of the Law of Limitation Act Cap 89 R.E 2019 gives

discretionary powers to the Court to extend time for sufficient reasons. Section 14 (1) says:-

"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

The crucial issue in the instant case is whether the delay was with sufficient reason. The applicant's first ground of his delay to appeal in time contends that it was caused by attending her sick sister who was suffering from HIV AIDS so she was taking care of her. She also narrated that she was also sick attending medical Laboratory on 28/2/2020.

The record shows that the decision appealed from was delivered on 14/6/2019 while the appellant filed her application to the District Land and Housing Tribunal on 30/3/2020 almost after 290 days. The question is whether the reasons stated constitute sufficient cause to warrant extension of time.

What amounts to sufficient cause has yet been defined but in the case of **William Malaba Butabutemi v. Republic, MZA**

Criminal Application No. 5 of 2005, (unreported), the Court referred with approval the case of **Citi Bank (Tanzania) ltd. v. TICI, TRA & Others, Civil Application No. 6 of 2003 (unreported)** where the Court took the stance that each case is to be looked at and considered on its own facts, merit and circumstances before arriving to a decision whether or not sufficient cause (now good cause) has been shown.

it is the trite principle that the applicant is supposed to show sufficient reasons upon which the court may consider in determining her application for extension of time this includes;

- i. The length of the delay.
- ii. The reasons for the delay;
- iii. Whether there is an arguable case such as whether there is a point of law on the Illegality or otherwise of the decision sought to be challenged; and
- iv. The degree of prejudice to the defendant if the application is granted.

It is a principle of law that a delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing periods within which certain steps have to be taken.

Together with the above cited case, in the circumstances, the applicant was required to account for each day of delay to the requirement of the law as from 14/6/2019 to 30/3/2020.

In the case of Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 CAT at Arusha, which set the guidelines for the factors to be considered by the Court in the exercise of its discretion to extend time or not. The Court held at page 6 among others that;

"the following guidelines may be formulated: -

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the action that he intends to take."*

Upon my perusal on the record, I have not seen any sufficient reason for application of an extension of time and there is neither point of law nor any clear point of illegality that warrants sufficient reason that could have moved the District Land and Housing Tribunal to grant leave sought for extension of time. Looking at the affidavit on the record, I find no point of illegality indicated by the appellant as part of her reasons for delay.

As a principle of law an application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

The Appellant has submitted that the ground of illegalities as the sufficient reasons for the Court to grant extension of time for the applicant to file application to file an appeal out of time but she has not shown those grounds as the affidavit is silent on the point of illegality.

It should be noted that the right of appeal is the Constitutional right, but this right is not automatic one has to follow rules and procedure to acquire this right.

Upon perusal of the tribunal's records, I am satisfied that the applicant was sick at the time that the intended appeal ought to have been filed and the issue of jurisdiction featuring on the face of the records, deserves attention of this Court.

In the light of the foregoing, ruling of the District and Land Housing Tribunal for Tabora cannot stand. Consequently, I hereby quashed the said decision. Accordingly, this appeal is granted.

The applicant is granted forty five (45) days within which to file an appeal to the District Land and Housing Tribunal for Tabora against decision of the Ilolanguru Ward Tribunal.




AMOUR S. KHAMIS.

JUDGE

13/12/2022

ORDER

Judgement delivered in Chambers in presence of both parties who appear in person.

Right of Appeal is explained.




AMOUR S. KHAMIS.

JUDGE

13/12/2022