

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. LAND APPLICATION NO. 52 OF 2022

(Originating from Land Appeal No. 90 of 2021 of the High Court of Tanzania at Mbeya.)

DOTEA HAMSINIAPPLICANT

VERSUS

STEVEN MGENDIHAMARESPONDENT

RULING

Date of last order: 11th October, 2022

Date of ruling: 5th December, 2022

NGUYNYALE, J.

The applicant has lodged the present application under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R: E 2019] (the AJA) seeking extension of time to file application for leave to appeal in Land Appeal No. 90 of 2021 delivered on 18th May, 2022 by Hon. Mongella, J. The application is supported by an affidavit of the applicant. It is opposed by the respondent who duly filed counter affidavit.

In short, the genesis of the matter is the Land Application No. 31 of 2021 before the District Land and Housing Tribunal (DHTL) for Mbeya in which they are battling for a rice farm located at Ihahi Village in Mbarali District. The applicant lost. Aggrieved she appealed to the High Court of Tanzania



at Mbeya in Land Appeal No. 90 of 2021. The appeal was dismissed for want of merits. Dissatisfied, he promptly lodged a notice of appeal on 19th May, 2022 but the appeal is not automatic, it has to be by leave of the court to be filed within thirty days. The applicant is caught in the web of time limitation, Consequently, she had to apply for an extension of time the subject of this ruling.

In the affidavit it is alleged that after delivery of judgment the applicant felt sick and on 22nd May 2022 was hospitalized, he attached medical chit. He further alleges that he has already filed notice of appeal.

When the application came on for hearing parties appeared in person, without legal representation. By consensus indorsed by the court its disposal was by way of written submission.

In her submission the applicant stated that powers of the court to extend time or not is discretionary under section 11(1) of AJA upon the applicant showing good cause. He cited the case of **Coca Cola Kwanza vs Paulo Kinga & Another**, Misc. Labour Application No. 22 of 202 to bolster her point.

She further submitted that after delivery of judgment on 19th May, 2022 he filed notice of intention to appeal, but on 20 and 21 May, 2022 felt sick and on 22nd May, 2022 was hospitalized at Chimala Mission Hospital for

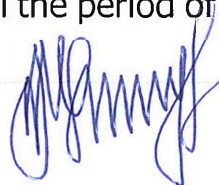


respondent further submitted that the applicant has not accounted for every day of delay and has not shown diligence in pursuing the matter. He cited the case of **Finca (T) Limited vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 in which it was held that delay of even a single day must be accounted.

In rejoinder the applicant made retaliation of her submission in chief. She stated as the application for leave was supposed to be made within fourteen days, medical chits attached explain away the delay as it fall within fourteen days.

I have considered submission of both parties, the only issue for determination is whether sufficient cause has been demonstrated. Before discussing merits of the application, I have to point out that application for leave has to be made within thirty days and not fourteen days as submitted by the applicant. This is well provided under section 45 (1) of the Court of Appeal Rule, 2009 as amended by G.N. No. 362 of 2017.

In any application for extension of time the law is settled that, sufficient cause is a pre-condition to prompt the Court exercise its discretionary powers under section 11 (1) of the AJA upon which this application is predicated. As to what constitute sufficient cause, various factors have to be considered including to account for all the period of delay which should



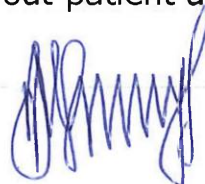
not be inordinate; the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

The main reason advanced by the applicant for the delay is that she was prevented by sickness. It is accepted that sickness in a fit case may amount to good cause for delay to do certain act within the prescribed time. See the case of **Miraji Salehe vs Kcb Bank Tanzania Limited**, Civil Application No. 118/16 of 2018, CAT at Dar es Salaam (Unreported).

The averments in the founding affidavit which explain the delay is paragraph 4 which is reproduced below, other averments in paragraph 1, 2, 3 and 5 are just explanation of the status of the parties in previous proceedings.

4. That, thereafter I was serious sick as the result I failed to manage the filing of the application to obtain leave against the decision of Hon. Mongella, J. within the prescribed time by law. copy of attendance chit is annexed and marked DH 2 to form part of this affidavit.

In her submission the applicant stated that on 20 and 21 May, 2022 felt sick and on 22nd May 2022 was hospitalized at Chimala Mission Hospital for Pneumonia. She added that she stayed there until 6/6/2022 when she was discharged but continued to be the out-patient until 2/7/2022. While

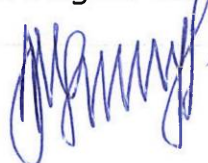


at home she continued to use drugs until 12/7/2022 when she felt relieved and on 13/7/2022 managed to file this application. In reply thereto it was submitted that in the affidavit the applicant has not stated when she felt sick, admitted to hospital and the date she was discharged. The respondent contended sickness in this matter is presumed. The respondent further submitted that the applicant has not accounted for every day of delay and that he has not shown diligence in pursuing the matter.

From the contention above, contrary to the explanation given in the submission, in the affidavit there is no explanation as when the applicant was admitted and discharged and in which hospital. The contents of annexure DH 2 its explanation was supposed to be given in the affidavit and not submission. In the case of **Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006, the Court held that;

'... submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence.'

From the above the applicant's affidavit is lacking all material averments which was necessary to establish her case. I agree with the respondent



that all explanation given in the submission was supposed to be reflected in the affidavit. A mere annexing medical chit DH 2 to the application has left the court to speculate what she meant which is very dangerous in the administration of justice. In the case of **Elisha Mang'ehe vs Nyangi Ogigo**, Civil Application No. 45/08 of 2018, CAT at Mwanza (Unreported) the court faced with akin situation held that;

'Lumping medical chits was on its own not sufficient without further explanation to elaborate on the treatment, especially in the absence of hospital admission or additional doctor's recommendation. From the information availed, I am inclined to conclude the applicant was following his treatment as an outpatient who could still easily monitor his other obligations, including following up on his application, be it himself or through his son or other relatives of his.'

Also, in the case of **Leonard Dominic Rubuye t/a Rubuye Agrochemical Supplies vs Yara Tanzania Limited**, Civil Appeal No. 219 of 2018, CAT at Dar es Salaam (Unreported) the court stated;

'... documents, although tendered in court, if no explanation is availed as to its purpose are of no assistance to the court. The duty lied on the party relying on them to demonstrate their significance. That said, much as we appreciate that a bunch of documents were tendered in court (exhibit PI), there was need for explanation as to their relevance.'

Annexure HD 2 tell that he was supposed to return on 2/7/2022 for follow up but not that he was attend as the out-patient. The period from 6/6/2022 to 13/7/2022 when he filed this application has not been




accounted for purpose of meeting the well-established principle that a litigant who wishes the Court to extend time has an obligation to explain away each day of the delay.

In the end, I find the application wanting in merits, it is hereby dismissed with costs.

DATED at MBEYA this 5th day of December, 2022




D.P. Ngunyale
Judge