

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPLICATION NO. 35 OF 2021

(Arising from Land Appeal No. 198 of 2019 in the District Land and Housing Tribunal for Mara at Musoma)

BETWEEN

WANKYO MAGIGE APPLICANT

VERSUS

MONYO GHATI SOGORYA RESPONDENT

RULING

22nd & 28th February, 2022

A. A. MBAGWA, J.

This is an application for extension of time within which to appeal against the decision of the District Land and Housing Tribunal for Mara at Musoma (the appellate Tribunal) in Land Appeal No. 198 of 2019 delivered on 11th September 2020. The application is premised under section 38 (1) of the Land Disputes Courts Act [Cap 216 R.E 2019] and section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019]. The application is supported by an affidavit sworn by the applicant, Wankyo Magige.

The decision sought to be impugned was delivered on 11th day of September, 2020 in absence of the applicant. It is important to note that



the applicant who was the appellant in Land Appeal No. 198 of 2019 had representation of Mr. Mahemba, learned advocate but neither the applicant nor her advocate was present on the judgment day.

The applicant, in her affidavit, contends that she was sick at all the time from 11th September, 2020 to 8th June, 2021. The applicant further states in particular at paragraph 8 that she became alert on 7th day of May 2020 when she was served with a summons in respect of application for execution of decree. The applicant attached to the affidavit a discharge summary dated 17/11/2020 indicating that the applicant was admitted at Manyamanyama Hospital from 11th September, 2020 to 17th November, 2020 when she was discharged. Despite the dates indicated in the discharge summary suggesting that the applicant was admitted for almost two months, the author a letter dated 18th May, 2021 states that the applicant was admitted for a period of one week.

In contrast, the respondent filed a counter affidavit to rebut the applicant's averments.

When the matter came for hearing, the applicant appeared in person whilst the respondent was represented by Ostack Mligo, learned advocate.

The applicant being a lay person did not have much to submit. She simply adopted the contents of her affidavit prayed the court to consider the grounds contained therein and grant the application.

Mr. Mligo, on his part, opposed the application. He said that the contents of the applicant's affidavit and the attachments were contradictory hence unreliable. Mligo said that the discharge summary dated 17/11/2020 indicates that the applicant was admitted at Manyamanyama Hospital from 11th September, 2020 and discharged on 17th November, 2020 but the medical doctor one Dr. Joshua Baraka Kungu who seemingly attended the applicant wrote a letter dated 18th May, 2021 (attachment to the affidavit) to the effect that the applicant was admitted for one week. According to Mligo, these were serious contradictions which dented the applicant's affidavit and its attachments.

Furthermore, Mr. Mligo submitted that the applicant did not account the delay from 6th June, 2021 when she allegedly got up from bed to 14th June, 2021 when she filed the present application. To back up his argument, he relied on the decision of the Court of Appeal in **Yazid Kassim Mbakileki vs CRDB (1996) LTD Bukoba Branch and Another**, Civil Application No. 412/04 of 2018, CAT at Bukoba at page 13 and 14. Finally, Mligo prayed the Court to dismiss the application with costs.

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I have dispassionately gone through the application documents and submissions by the parties. The germane issue for determination is whether the applicant has demonstrated sufficient cause to warrant her grant of extension of time. Indeed, there is no decisive definition of what a sufficient/good cause is, however, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported).

In this application, the judgment was delivered on 11th September, 2020 but the application was filed on 14th June 2021 which is almost ten months. Admittedly, the length of delay was inordinate. Further, the attachment (a letter dated 18th May, 2021) shows that the applicant was discharged on 17th November, 2020 after her healthy condition had improved and

therefrom, she was attending monthly clinics as an outpatient. It is inconceivable if the applicant was able to move from home to clinic why did she fail to go to court and process his appeal. In addition, the applicant's attachments are questionable. The discharge summary was signed on 17th November, 2020 and indicates that the applicant was admitted on 11th September, 2020 and discharged on 17th November, 2020. To my dismay, the Doctor, in the letter dated 18th May, 2021 states that the applicant was admitted for only one week. This confusion renders the applicant's affidavit unreliable.

More so, I have strenuously navigated through the deposition in particular at paragraph 8 of the applicant's affidavit and found that the applicant was triggered to file this application after she was served with a summons in respect of the application for execution. It therefore goes without say that the conduct of applicant in filing this application is calculated to prevent the respondent from enjoying decree.

Having taken into account the above, I find that the applicant has not shown good and sufficient cause, in terms of section 38(1) of the Land Disputes Courts Act, for this Court to grant her extension of time. I consequently, dismiss the application for want of merits. Each party should bear its own costs.

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It is so ordered.

The right of appeal is explained.


A.A. Mbagwa

Judge

28/02/2022

Court: This ruling has been delivered in the presence of the applicant, on the one hand and on the other hand, Ostack Mligo, learned counsel for the respondent and the respondent this 28th day of February 2022.


A. A. Mbagwa

JUDGE

28/02/2022

