

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT ARUSHA

LAND APPEAL NO. 4 OF 2020

(Originating from the District Land and Housing Tribunal for Manyara in Misc. Application No. 27 of 2019)

HELENA PETRO APPELLANT

Versus

BONIFACE CHARLES (As the Administrator of the Estate of the late *Charles Mramboa*) RESPONDENT

JUDGMENT

8th December, 2021 & 18th February, 2022

Masara, J.

In the District Land and Housing Tribunal for Manyara ("the district tribunal"), the Appellant herein was unsuccessful in an application she filed seeking extension of time to file Bill of Costs awarded in Execution Application No. 307 of 2013 delivered in her favour on 19/03/2014. The Execution Application had been preceded by Application No. 12 of 2011 initiated by the Appellant against the Respondent at Dareda Ward Tribunal. That case was decided in the Appellant's favour. At the district tribunal, the Appellant stated that she was late to file her Bill of Costs due to sickness. The district tribunal chairman ruled that the Appellant failed to show good cause for the delay of five years. That decision did not please the Appellant

who preferred this appeal on a single ground of appeal as reproduced hereunder:

"That, the Trial Chairman of the District Land and Housing tribunal erred in law and facts when it (sic) dismissed Misc. Application No. 27 of 2019 applying extension of time to file Bill of Costs out of time while there is (sic) sufficient reasons from the Appellant with clear evidence indicating the delay of the Appellant to file Bill of Costs within the period prescribed by the law."

Basing on the above ground, the Appellant prays that the Court allows the appeal by allowing the Appellant to file Bill of Costs out of time.

At the hearing, the Appellant was represented by Mr. Paschal Peter, learned advocate. The Respondent appeared in person, unrepresented. The Respondent's attendance in Court proved wanting despite services. On 27th October, 2021, it was requested by the Applicant and the Court acceded that the appeal be heard through filing written submissions. I have noted that the Respondent did not file reply submission as ordered despite being dully served with the Appellant's submission in chief.

It is trite law that failure to file written submission as ordered by Court is tantamount to failure to enter appearance in Court when the case is set for

hearing. In this respect, I seek inspiration from the Court of Appeal decision in **Godfrey Kimbe vs. Peter Ngonyani**, Civil Appeal No. 41 of 2014 which cited its previous decision in **National Insurance Corporation of (T) Ltd & Another vs. Shengena Limited**, Civil Application No. 20 of 2007 (both unreported), where the Court made the following observation:

"In the circumstances, we are constrained to decide the preliminary objection without the advantage of the arguments of the applicant. We are taking this course because failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case"

Thus, since the Respondent opted not to file his written submission as ordered by this Court, this Court proceeded to determine the appeal basing on the Appellant's submission only.

Submitting in support of the appeal, Mr. Peter contended that the Appellant presented before the district tribunal sufficient reasons which warranted her to be extended time. He made reference to the affidavit and submission filed in the district tribunal stating that the Appellant delayed due to the accident she encountered and she annexed medical chits from Dareda and Machame Hospitals in her affidavit as proof. Further, she orally submitted in the district

tribunal that her own child and aunt were seriously sick and she was the one taking care of them until her aunt passed away. According to Mr. Peter, the above reasons were not controverted by the Respondent at the hearing; yet, the district tribunal chairman ruled against her. The learned advocate maintained that the Appellant never slept over her rights and that she acted promptly and diligently which is sufficient cause for the delay. To that end, Mr. Peter prays that the appeal be allowed and the Appellant be extended time to file Bill of Costs out of time with costs.

I have considered the ground of appeal by the Appellant and the written submission by the counsel for the Appellant, I have also scrutinised the records of the district tribunal; the issue for determination is whether the Appellant demonstrated good cause to deserve extension of time sought.

It goes without saying that sufficient cause for the delay is *conditio sine qua non* for extension of time to be granted. Going by the affidavit of the Appellant filed in the district tribunal, the main reason for the delay as pleaded under paragraph 4 of the said affidavit is that the Appellant was seriously sick, therefore she was attending Hospitals for treatment. In his

demonstration on the matter, the tribunal chairman held that the Appellant's medical chit showed that the Appellant was treated only on 21/03/2013 when she attended Machame Hospital. On her sick child and aunt, the district tribunal ruled that the same was not stated in the affidavit, therefore it was a new issue.

The law is clear that affidavits are evidence. What is not pleaded in the affidavit cannot be raised or argued in the oral or written submissions. In this stance I am guided by the decision of the Court of Appeal in **Omary Shaban S. Nyambu (as the Administrator of the late Iddi Moha (Deceased) vs. Dodoma Municipal Council (Formerly Capital Development Authority) and 2 Others**, Civil Application No. 125/03 of 2020 (unreported), where it was held:

*"I am alive to the fact that in his oral submissions the applicant's counsel has claimed illegalities patent in the impugned decision. The applicant has not averred any illegality in the applicant's affidavit nor expounded any areas of concern to expound the claimed illegality in the impugned decision. Suffice to say, in **Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government and 11 Others**, (supra) it was held that:*

... it was expected that reasons for the delay would be reflected in the affidavit. In the absence of reasons, it occurs to us that there was no material evidence upon which the judge could determine on merit the application before him..."

From the above position of the law, the tribunal chairman was correct for his refusal to rely on the new grounds raised by the Appellant in her submissions. That being the case, the reason for the Appellant's delay as stated in paragraph 4 of her affidavit is that she was seriously sick and was attending Hospitals for treatment. That also featured in her advocate's submission in this appeal. I have gone through the medical chits annexed in the affidavit as proof of her sickness, they only show that the Appellant attended Machame Hospital on 21/03/2013, and was issued with Medical Card No. 18-83-32. That card does not suggest whether the Appellant was admitted or she was attended as outpatient department. Another medical chit is in respect of Donald Bee who was admitted at Dared Hospital on 22/08/2014 and discharged on 18/09/2014. The other medical chits are in respect of Veronica Mgoni Lohay who attended Dareda Hospital from 2014 to 2017. (I presume the said Donald Bee and Veronica Mgoni Lohay to be the son and aunt of the Appellant respectively).

Even if I were to consider her reason that she was attending the said child and aunt, their records do not reveal whether they were being taken care of for the whole period of the delay. That apart, the medical chits of the said child and aunt, cover the period between 2014 and 2017. The application in the district tribunal was filed on 27/03/2019, which suggests that still the period between 2018 and 2019 was not accounted for. That suffices to make a finding that the Appellant did not account for each day of the delay.

As I have stated above, the only evidence in respect of the Appellant is Machame Hospital Medical Card No. 18-83-32., which was issued on 21/03/2013. There is no any other evidence suggesting the period the Appellant remained sick. I am alive to the fact that sickness once proved amounts to sufficient cause for extending time. In the case at hand, the alleged sickness of the Appellant was not proved. There was no record showing that she was attended, apart from the card that shows that she attended Machame Hospital. The Court of Appeal, faced with a similar situation in the case of **Juto Ally vs. Lukas Komba and Another**, Civil Application No. 484/17 of 2019 (unreported), held as follows:

"Indeed, she has also not explained how her illness contributed to the delay as the medical evidence she attached to her affidavit concerns the period specifically for the dates when she attended to hospital on 8th October, 2016 and 19th June, 2016. Besides, there is no indication that on those particular dates she was admitted and for how long. The only indication is that she attended at Mwananyamala Hospital as an outpatient where she was attended and allowed to go to her residence on both occasions."(Emphasis added)

Circumstances of the instant appeal compel me to go by the above position of the law. Execution Application No. 307 of 2013 that awarded the Appellant costs was determined on 19/03/2014. The application in the district tribunal was filed on 27/03/2019, five years later. The Appellant could not explain that she was sick for the whole period of five years. As I have pointed out before, the other grounds relied to in the submissions cannot also be considered to cover the whole period of five years. Suffice it to say that the Appellant failed to account for the delay of five years to file her Bill of Costs. The delay of unexplained five years is in any case inordinate. The Appellant did not act diligently in pursuing her right as correctly held by the district tribunal chairman.

In the circumstances, this Court holds the view that the Appellant has failed to demonstrate sufficient cause for the delay in filing the Bill of Costs. The appeal is devoid of merits. I dismiss it in its entirety. The decision of the district tribunal is consequently upheld. Considering the fact that the Respondent did not turn up to prosecute the appeal, I make no order as to costs.

Order accordingly.




Y. B. Masara

JUDGE

18th February, 2022.