

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA.**

AT ARUSHA.

MISCELLANEOUS LAND APPLICATION NO. 70 OF 2021

**(C/F Appeal No.68 of 2018 of the District Land and Housing Tribunal for
Arusha at Arusha)**

GADIEL AYO..... APPLICANT

VERSUS

MOSES NDETAULO..... RESPONDENT

RULING

Date of last order: 23-2-2022

Date of Ruling: 4-4-2022

B.K.PHILLIP,J

This ruling is in respect of an application for extension of time to appeal against the decision of District Land and Housing Tribunal for Arusha at Arusha in Land Appeal No. 68 of 2018, delivered on 19th March 2020. The applicant being aggrieved by the decision of Sangoro Ward Tribunal in application No. 11 of 2018 lodged the aforesaid Land Appeal No.68 of 2018 at the District Land and Housing Tribunal for Arusha at Arusha (Hereinafter to be referred to as " The Land Tribunal") which was dismissed with costs for lack of merit. Still aggrieved by the decision of the Land Tribunal the applicant desires to appeal to this Court, but he is out of time. Thus, he filed this application praying for an order for extension of time for lodging his appeal.

The application is made under section 38 (1) of the Land Disputes Courts Act (Cap 216 R.E 2002) and section 14 of the Law of Limitation Act (Cap 89 R.E 2019). It is supported by an affidavit sworn by applicant. The respondent filed a counter affidavit in opposition to the application. The application has been disposed of by way of written submissions. Both the applicant and respondent were unrepresented, thus appeared in person. However, the submissions for the applicant indicates that it was prepared by the learned Advocate Amani Erald Mkwama of the Legal and Human Rights Center, Arusha. Submitting on the reasons for delay in lodging the appeal, Mr. Mkwama submitted that on 24th March 2020 the applicant had general body weakness which was caused by excessive sweating and vomiting. He was admitted at Selian Lutheran Hospital for two weeks. On the 20th April 2020 he fell sick again. He had dry cough and difficulties in breathing, thus he was admitted again at Selian Lutheran hospital for twenty one days. He was discharged on 11th May 2020, with instructions to maintain self-isolation. On 25th May 2020 his condition changed again and was taken to the same hospital for treatment. Mr. Mkwama went on submitting that after his recovery, on 18th July 2020, the applicant filed an application for extension of time for filing an appeal out of time in this Court vide Misc. Application No. 45 of 2020, which was struck out for being incompetent. The applicant attached into his affidavit a copy of the decision of this Court in the said Misc. Application No. 45 of 2020 and a document titled "progress report and medical orders" bearing a rubber stamp of Selian Lutheran Hospital Arusha, dated 12th June 2020.

In rebuttal, the respondent contended that the applicant has failed to establish that he had been sick because there is no any medical card/report to prove that he was really sick. The document annexed in the affidavit does not qualify to be termed as a medical report. He submitted further that the document attached to the affidavit shows that from 24th March 2020 the applicant was admitted at Selian Luthera Hospital, and later on he was discharged, but he did not account for a period after his discharge from Hospital to 20th April 2020.

Furthermore, the respondent contended that it is trite law that a person who applies for extension of time must account for each day of delay. To bolster his arguments he cited the case of **Kibo Hotel Kilimanjaro Limited vs Treasury Registrar and another, Civil Application No. 502/17 of 2020 in Court of Appeal of Tanzania at Dar es salaam (Unreported)**.

The respondent concluded his submission by pointing out that the applicant failed to show any chances of success of the intended appeal. Mr. Mkwama did not file a rejoinder.

Having perused the affidavit and counter affidavit filed by the parties, and considered the competing arguments made by the parties in their written submissions, I am of the opinion that the major issue for determination in this matter is whether the applicant has shown sufficient cause for delay in filing his appeal.

The position of the law is that granting or not granting extension of time lies in Court's discretion. However, the same has to be exercised judiciously. The applicant is required to give sufficient cause for the

delay. There are no hard and fast rules on what amount to sufficient cause. However, our Courts have laid down some factors which are normally used as guidance in making determination on whether the applicant has adduced sufficient cause for the delay. For instance, in the case of **Lyamuya Construction Company Limited and Board of trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported) the Court of Appeal said the following ;

"As a matter of general principle it is in the discretion of the court to grant extension of time. But that discretion is judicial and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however 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.*
- d. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

[Also, see the case of **Kibo Hotel Kilimanjaro Limited Vs The Treasury Registrar (Being the legal successor of PSRC) and another , Civil Application No.502/17 of 2019** (unreported)].In addition, the law requires the applicant to account for each day of delay. Delay of even a single day has to be accounted for. [see the case of

Hassan Bushiri V. Latifa Lukio Mashayo, Civil Application No.3 of 2007 (Unreported)].

Back to the application in hand, in his affidavit the applicant stated that from 24th March 2020 to 6th April 2020 he was admitted at Selian Lutheran Hospital. On 20th April 2020 he fell sick again and was admitted to the same hospital for twenty-one days up to 11th May 2020. He was discharged with instructions to maintain self isolation. On 25th May 2020 he fell sick again. He did not state the date of recovery. He just stated that after recovery, on 18th July 2020 he filed his application for extension of time to appeal to this Court vide Misc. Application No.45 of 2020 which was struck out for being incompetent on 6th August 2021. Going by the dates on which the applicant was sick, it is apparent that there are numerous days which the applicant did not explain what prevented him from filing the application for extension of time earlier. In other words, there is inordinate delay in filing this application as well as the first application (Misc Application No. 45 of 2022) which was struck out. For instance, from 24th March 2020 to 20th April 2020 , there are fourteen (14) days which have not been accounted for. For the sake of arguments, let me assume that the applicant was sick for the whole period from 24/03/2020 to 18/07/2020 when he filed Misc. Application No. 45 of 2020. According to paragraph nine of his affidavit the ruling in Misc. Application No. 45 of 2020 was delivered on 6th August 2021 and this application was filed on 17th September 2021. Counting from 6th August 2021 to 17th September 2021 there are about forty (40) days which the applicant have not explained what prevented him from filing another application immediately after the

previous one was struck out for being incompetent. This depicts lack of diligence on part of the applicant.

From the foregoing, I find myself in agreement with the respondent that the applicant has failed to give sufficient reasons to move this Court to exercise its discretion in his favour. Thus, I hereby dismiss this application with costs.

Dated this 4th day of April 2022




B.K.PHILLIP

JUDGE

ORIGINAL