

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

**IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

Misc. LAND CASE APPEAL No. 74 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Tarime in Land
Application No. 20 of 2019)*

MAHUTI MWITA CHOTA ----- APPELLANT

Versus

ANTHON CHOTA ----- RESPONDENT

JUDGMENT

16.03.2022 & 16.03.2022

Mtulya, F.H., J.:

Mr. Mahuti Mwita Chota (the applicant) approached this court on 24th August 2021 and preferred the present application (the application) seeking enlargement of time to protest decision of the **District Land and Housing Tribunal for Mara at Tarime** (the tribunal) in **Land Application No. 20 of 2019** (the case) which was delivered by the tribunal on 12th March 2021 and certified for collection on 16th March 2021.

In his affidavit in support of the application at the third paragraph, the applicant stated that he was delayed by the tribunal in obtaining a copy of judgment of the case until 22nd June 2021. When the application was scheduled for hearing today afternoon in this court, the applicant registered three (3) reasons of the delay,

namely: first, the delay was caused by tribunal in supplying the copy of judgment in the case; second, death of his relative called Mr. Lugomba Katanyika; and finally, sickness on his part. With the last two reasons, which were not reflected in the affidavit, the applicant stated that his relative Mr. Katanyika had expired and that burial ceremonies took sometimes. According to the applicant, after the burial activities, he suffered sickness and got reliefs in the late August 2021 hence filed the present application.

The submission and reasons of the delay were protested by Mr. Anthon Chota (the respondent) who briefly submitted that the applicant had registered allegations without proof of any evidence and in any case the two (2) months delay without plausible explanations cannot warrant extension of time to file appeals out of time. In the respondent's opinion, the applicant had slept on his right to appeal until when he was arisen by the **Application for Execution No. 75 of 2021** filed in the tribunal originated from the case.

I scanned the practice of this court and the Court of Appeal on issues related to enlargement of time. I found that for enlargement of time, applicants must register relevant materials to persuade courts to exercise their discretionary mandate in favour of the applicants (see: **Alliance Insurance Corporation Ltd v. Arusha Art**

Ltd, Civil Application No. 33 of 2015; and **Hezron Hudson Winani & Another v. North Mara Gold Mine**, Misc Civil Application No. 2 of 2022). The practice also require applicants for enlargement of time to act very expeditiously since becoming aware that they are out of time (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008), and to account on every day of the delay without any gaps (see: **Bashiri Hassan v. Latifah Lukio Mashayo**, Civil Application No. 3 of 2007; **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **Elius Mwakalinga v. Domina Kagaruki & Five Others**, Civil Application No. 120/17 of 2018).

In the present application the applicant had displayed two (2) months the delay in his affidavit and today during submission in favour of the application. The gap is displayed from when the applicant had collected the copy of judgment of the case in the tribunal on 22nd June 2021 to when he filed the present application in this court on 24th of August 2021. The applicant when was asked to account on every day of the delay, or showing promptness in preferring the application, he stated general reasons of the delay without any specific explanations.

I understand the applicant stated that he was busy with funeral issues of his deceased relative, Mr. Katanyika and that he was sick

up to the end of August 2021. I am equally aware of that sickness or death of close relatives may be considered as part of good causes in an application for enlargement of time (see: **Kapapa Kumpindi v. The Plant Manager, Tanzania Breweries Limited**, Civil Application No. 6 of 2010; and **Benezeth Mwebesi & Two Others v. Baraka Peter**, Misc. Civil Application No. 49 of 2019). However, the allegations in the present application are not in the affidavit and no any evidence which were registered to substantiate either sickness or death of Mr. Katanyika. In any case, the applicant is silent on whether Mr. Katanyika is a close relative in his family ties or any other relative. The applicant is also silent on when exactly the death of his relative occurred of completion of the burial ceremonies.

In the circumstances of the present application, it is difficult to say the applicant had registered relevant materials to persuade this court to invite its discretionary mandate and decide in his favour. Having said so, I dismiss the application without costs as the parties are relatives and may wish to try amicable settlement of their differences at family level.

Ordered accordingly.



F. H. Mtulya

Judge

16.03.2022

This ruling was delivered in chambers under the seal of this court in the presence of the applicant, Mr. Mahuti Mwita Chota and in the presence of the respondent, Mr. Anthon Chota.



F. H. Mtulya

Judge

16.03.2022