

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 90 OF 2021

*(Arising from the Decision of the District Land and Housing Tribunal for
Tarime at Tarime in Misc. Land Application No. 65 of 2021)*

BETWEEN

ODERA OLOO ORONA APPELLANT

VERSUS

PHINIAS ODEMBA OTIENO RESPONDENT

JUDGMENT

30th March & 04th April, 2022

A. A. MBAGWA, J.

This is an appeal against the ruling of the District Land and Housing Tribunal for Tarime which declined to grant extension of time for the appellant to file an application to set aside a dismissal order.

The background leading to the present matter may, in a nutshell, be narrated as follows; On 17th March, 2020 the respondent, **Phinias Odemba Otieno** successfully sued the appellant **Odera Oloo Orona** over a piece of land before Nyathorogo Ward Tribunal in Rorya District. The appellant was dissatisfied with the decision of the Ward Tribunal hence on 1st April, 2020 lodged an appeal before District Land and Housing Tribunal for Tarime (the DLHT) in Land Appeal No. 44 of 2020.

As bad luck would have it, on 5th February, 2021 the Land Appeal No. 44 of 2020 was dismissed for non-appearance of the appellant. After a lapsed of two months i.e. on 14th April, 2021 the appellant filed, before the DLHT, Miscellaneous Application No. 65 of 2021 praying for the following orders;

1. That, the Honorable Tribunal be pleased to extend time for the applicant to file an application out of time to set aside *ex parte* order.
2. Costs.
3. Any other Order(s) the Tribunal deems just and fit to grant.

In the supporting affidavit, the appellant deponed that he failed to appear effectively before the DLHT due to his bad health conditions. He contended that he engaged the services of Advocate Rebeka Magige who, without his attention, failed to appear at the Tribunal on diverse dates between 5th May, 2020 and 5th February, 2021.

The appellant further deponed that he was unaware with the dismissal order of 5th February, 2021 until on 3rd April, 2021 when he was served with the summons to appear in Miscellaneous Application No. 57 of 2021 for the execution of the decree.

In reply, the respondent filed counter affidavit to oppose the appellant's application.

After hearing both parties, the DHLT did not see sufficient cause to warrant extension of time. Consequently, it dismissed the application with costs for want of merits.

It is against this backdrop the appellant has filed the instant appeal. He advanced three grounds of appeal which are;

1. That, the tribunal erred in law and facts in its judgment by not taking its consideration the evidence adduced by the appellant that he appear (sic) in few days due to bad health conditions resulted from old age he has.
2. That, the tribunal erred in law and facts in its judgment by not taking into consideration the evidence adduced by the appellant that he engaged the service of Advocate, who failed to appear on diverse dates between 5th day of May 2020 and 5th day of February 2021.
3. That, the tribunal erred in law and fact by not considering the rule of natural justice particularly the Right to be heard.

When the appeal was called on for hearing, the appellant was represented by Mr. Onyango Otieno, the learned advocate whilst the respondent fended for himself.

In supporting the appeal, Mr. Otieno argued all the three grounds seriatim. He submitted that, non-appearance of the appellant before the

DLHT was not intentional rather it was a mistake of his advocate for which the appellant ought not to be punished. Citing the case of **Lyamuya Construction Company LTD vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha, Mr. Otieno submitted that it is the discretion of the Court to grant extension of time. He further averred that the appellant is old and was experiencing a periodic sickness. The appellant's counsel further contended that the appellant accounted for thirty-eight (38) days of delay. He thus prayed the appeal to be allowed.

In reply, the respondent submitted that the appellant denied himself the right to be heard as he failed to attend in court for no reasonable grounds. The respondent further submitted that the advocate who was engaged by the appellant appeared before the Tribunal only once. He contended that the appellant is energetic for he is grazing cattle at home and he also had sons whom he could send to court to follow up the matter. The respondent continually averred that upon dismissal of the appeal, the appellant did not act until when he served him with the notice of execution application. In addition, the respondent lamented that the appellant could not produce any document to prove that he was sick. Lastly, the respondent stated that, if the application is granted, he will be prejudiced as he has always been incurring costs by paying fare to come to court.

In rejoinder, Mr. Otieno conceded that it was after the appellant was served with summons for execution application when he became alert. He reiterated that the advocate's mistake should not cost the client.

Having appraised the lower Tribunal record, petition of appeal and submissions made by both parties, I find that the main issue for determination of this appeal is whether the appellant advanced sufficient cause for the Tribunal to grant him extension of time.

It is undisputed that the appellant delayed for thirty-eight (38) days to lodge an application to set aside a dismissal order delivered on 5th February, 2021 before the DLHT.

The appellant faulted the DLHT for not taking into consideration his evidence adduced thereby arriving at a wrong decision. This court, being the first appellate/revisional court, is entitled to step into the shoes of the DLHT, re-evaluate the evidence and come into its own findings where necessary.

Thus, on the strength of the foregoing position of law, I took troubles to review and assess afresh the evidence presented before the DLHT.

It is a settled law that in determining an application for extension of time, the determining factor is whether the applicant demonstrated sufficient cause. Nonetheless, there is no decisive definition of what a sufficient

cause is. As such, in deliberating on 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, 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, whether there is illegality in the decision sought to be challenged, negligence on the part of the applicant and whether the applicant has accounted for all the period of delay. See **Jaliya Felix Rutihwa vs. Kalokola 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, **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported), **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania** (supra) and **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (all unreported).

The appellant submitted that his delay was due to sickness and failure of his advocate to appear before the Tribunal. However, the appellant failed to attach an affidavit of the said advocate Rebeka Magige to support his

contention. It is a trite law that where a deponent mentions a person in the affidavit in relation to an important fact, the mentioned person should also swear an affidavit to buttress the averment. (See the case of **Sabena Techincs Dar Limited vs. Michael J. Luwunzu**, Civil Application No. 451/18 of 2020 CAT at Dar es salaam). To crown it all, the appellant failed to submit any documentary evidence or proof to show that he was sick for all period of the pendency of the case.

Although the ground of sickness is a good and sufficient cause for extension of time, it must be proved. The applicant must also demonstrate how the said sickness prevented him from taking the necessary measures within time. This stance was taken by this Court in **Pastory J. Bunonga vs. Pius Tofiri**, Miscellaneous Land Application No. 12 of 2019 (unreported).

Furthermore, it is undisputed that appellant filed the application for extension of time after the respondent served him with summons for execution application. Indeed, the appellant's conduct, in the circumstances, deserves to be interpreted as malicious intended to prevent the respondent from enjoying the decree.

I agree with Mr. Onyango that it is the discretion of the Court to grant extension of time but that discretion should be exercised judiciously.


Looking at the evidence adduced by the appellant before the DLHT in line with the above guiding principles, I am of similar views with the Chairman that the appellant failed to establish sufficient cause for the Tribunal to grant him extension of time. Indeed, the Chairman was right in his decision.

That said and done, I find the appeal meritless and consequently dismiss it. The appellant should bear costs of this appeal.


It is so ordered.

The right of appeal is explained.




A. A. Mbagwa
JUDGE
04/04/2022

Court: Judgement delivered via teleconference in presence of Samson Samo, learned counsel for the applicant and in the physical presence of the respondent this 4th day April, 2022.


A. A. Mbagwa
JUDGE
04/04/2022