

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

MISC. LAND CASE APPLICATION NO. 585 OF 2020

(Originating from the District Land and Housing Tribunal for Kilombero/Ulanga in
Land Appeal No. 286 of 2017)

MARIA MYOLELE..... APPLICANT

Versus

BONAVENTURA DUGUYA..... RESPONDENT

R U L I N G

**16th Dec, 2021 &
19th Jan, 2022**

CHABA, J:

The applicant has moved this court under section 38 (1) of the Land Disputes Courts Act [Cap.216 R.E. 2019] (the Land Disputes Act) seeking for an extension of time to file an appeal against the decision and order of the District Land and Housing Tribunal for Kilombero/Ulanga in Land Appeal No. 286 of 2017 (the DLHT) which stemmed from the decision of Kindiuka Ward Tribunal in Land Case No. 38 of 2017 (the Ward Tribunal). The application is supported by an affidavit deposed by Mr. Masige Magesa, learned Advocate. In essence, the applicant seeks for the following orders:

1. That, this Honourable Court, Land Division be pleased to grant the applicant leave to appeal out of time,
2. Costs of this application be provided for, and
3. Any other reliefs that this Honourable Court deemed fit and just to grant.

At the hearing of this application, Ms. Japhari, learned advocate entered appearance for the applicant, while the respondent appeared in person, unrepresented. The learned advocate prayed to adopt the affidavit deposed by Mr. Masige Magesa. Basically, she reiterated what had been explained in the said affidavit and gave an account of the reasons for delay. To bolster her submission, the learned advocate further cited the cases of **Julius Wilfred Mungure v. Mwarabu Kitisha**, Misc. Land Application No.61 of 2019 and **Mary Mbwambo and Another v. Mbeya Cement Co. Limited**, 2017 (both unreported). Whereas in **Julius Wilfred Mungure** (supra) sickness was held to be sufficient cause for failure to appeal within the prescribed time, in the case of **Mary Mbwambo and Another** (supra), the sequence of events and promptness taken by the applicant till when they lodged their application, was held to be positive or honesty accounts for the delays.

On the other hand, the respondent resisted the applicant's application and submitted that the applicant has filed some cases against him. In her rejoinder, the counsel for the applicant reiterated her submission in chief.

I have gone through the records of the DLHT, instant application and the parties' submissions for and against the grant of this application. The main issue for determination is whether the applicant has adduced sufficient reasons to warrant this court exercise its discretionary power to grant the sought extension of time.

My observation is that the record of the DLHT shows that the appellant unsuccessfully filed a case in the Ward Tribunal of Kitindiuka

to recover her piece of land which is alleged to have been trespassed by the respondent. The DLHT delivered her judgment on 08/03/2019 and according to the law under section 38 (1) of the Land Dispute Courts Act, appeal on matters originating from Ward Tribunal is within sixty (60) days. It is thus read:

"Section 38 (1) - Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:

Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired".

As hinted above, the record at the DLHT is clear that the judgment was pronounced on 08/03/2019 and the time to appeal to the High Court of Tanzania, Land Division which is sixty (60) days from the date of judgment, expired on 07/05/2019. About 99 days later on 13/08/2019 which is more than three months after the expiry of time to appeal to the High Court, the applicant filed **Misc. Land Application No. 455 of 2019** seeking leave to appeal out of time against the impugned decision of the DLHT, herein **Land Appeal No. 286 of 2017** delivered on 08/03/2019, though the case was dismissed on the 27/08/2020 for non-disclosure of good grounds for the delays to file the intended appeal. The major reason for delay advanced by the learned counsel was due to sickness. The applicant was suffering from the disease associated with pancreas before and after pronouncement of the judgment before the DLHT for Kilombero/Ulangua (**Land Appeal No. 286 of 2017**). The

applicant attached some medical documents as annexure 'B' to substantiate her argument.

Ms. Japhari submitted that since the applicant had undergone an operation or surgery for the disease, on 13/08/2019 she got a relief and filed the said application seeking leave to appeal out of time via **Misc. Land Application No. 455 of 2019**. However, this application was dismissed for the reasons referred to above, but with the leave to refile the same. Thus, on 15/10/2020 she filed this application seeking leave to appeal before this court. She further highlighted that from the date of judgment on 08/03/2019 to 15/10/2020 is a period of about 17 months and 1 week which is calculated to be the period of time so delayed.

She went on submitting that when 60 days expired on 07/05/2019 the applicant's health condition was not good for one reason that her sore was yet to be healed. In that view, the applicant continued to spend her monies looking for proper treatments. That is why on 13/08/2019 when she got back to good health, she filed **Misc. Land Application No. 455 of 2019**. This case was admitted and stayed before the court for about 12 months and 1 week, but it was struck out on 27/08/2020 for non-disclosure of the reasons for delay. As the applicant's condition was still weak, she filed the instant application on 15/10/2020 which is a period of 1 month and two weeks.

It is on the basis of the above grounds, Ms. Japhari submitted and prayed that the applicant's prayer be granted on the ground that she has managed to exhibit good cause for delays which prevented her to appeal within the prescribed period of time.

From the above explanations, the applicant relied on two medical documents to prove that her health condition was unfit and the same was the main source of delay to file her appeal within the prescribed period of time (60 days). One of these two documents issued by St. Francis Referral Hospital at Ifakara to the applicant on 04/10/2017. It is called OPD Prescription, Card No. 67324. The medical note shows that on the material date the applicant was prescribed and administered with some medications including Heligokit 3 x 2 x 7/7; PCM Tab 1g x 3 x 3/7 and Relcers Sup. 10 m/s x 3 x 10/7. The other document which is a Referral Form for Health Centres and Dispensaries (Non-emergency) dated 03/03/2018 bore the names of Mary Adam Myolele, the applicant herein. According to this medical note, the so-called examination findings revealed that the applicant's wound was smelling with a lot of black fluid from it.

In the circumstance of this application, it is trite law that extension of time is founded on judicial discretion and the applicant is duty bound to show good and reasonable cause to warrant the court exercise its discretionary power as it was expounded in the case of **Kalunga and Company Advocates v. National Bank of Commerce Limited** [2006] TLR at page 235.

It is settled that what amount to sufficient cause is not yet defined. (See: **Tanga Cement Company Limited v. Masanga and Amos A. Mwalwanda**, Civil Application No.6 of 2001 (Unreported)). It is further clear from decided cases that, a number of factors have to be taken into account, including whether or not the application has been brought promptly and the absence of any valid explanation for delay and lack of

diligence on part of the applicant. Also, there are other factors that are used to determine whether the applicant has shown good and reasonable cause to justify his/her delay. These include the length of the delay, whether or not the delay has been fully explained, diligence on the part of the applicant and whether there is any illegality in the impugned decision. See the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). But, more importantly, the applicant has to account for each day of delay.

Back to the instant application, the applicant's reason for delay is sickness. The law is well established that sickness is taken as a good cause because it is beyond human control. This was expounded by the Court of Appeal of Tanzania in the case of **Emanuel R. Maira v. The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported) when it held that:

"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike".

Yet, for sickness to be considered as good ground for extension of time, it must be proved by medical evidence. In **Pastory J. Bunonga v. Pius Tofiri**, Miscellaneous Land Application No.12 of 2019 [2020] 1; this Court (Rumanyika, J., as he then was) held inter-alia that:

"Where it was on the balance of probabilities proved, sickness has been good and sufficient ground for extension of time yes. But with all fairness the fact cannot be founded on mere allegations. There always must be

proof by the applicant that he fell sick and for the reason of sickness he was reasonably prevented from taking the necessary step within the prescribed time".

I have considered the two medical documents, the decision reached by the DLHT and the submission advanced by Ms. Japhari, learned advocate explaining the reasons why the applicant delayed to file her appeal within the prescribed time. I have also considered the decision reached by the court in **Julius Wilfred Mungure** (supra) and the principle of law stated in the cases of **Lyamuya Construction Company Limited** and **Pastory J. Bunonga v. Pius Tofiri** (Supra). In gauging whether or not the applicant has exhibited sufficient cause to warrant this court exercise its discretionary power and grant the prayers sought in line with the principles of law enshrined in the above cited case laws, frankly speaking and with due respect to the learned advocate, I am afraid that I am not in a position to exercise my discretion. I have the reasons.

One, the OPD Prescription, Card No. 67324 issued by the St. Francis Referral Hospital to the applicant shows that it was issued on 04/10/2017 probably, when the original matter registered as **Land Case No. 2017** was before the Ward Tribunal and not after the impugned decision was delivered on 08/03/2019. Similarly, the other medical document namely Referral Form for Health Centres and Dispensaries was issued to the applicant on 03/03/2018 even before pronouncement of the judgment of the DLHT on 08/03/2019. Though it is evident that the applicant was sick on 04/10/2017 and 03/03/2018, but the medical documents, in my opinion, should have proved that the appellant fell

sick and maybe she was admitted and hospitalized or was reasonably prevented for health matters for the whole period due to sickness after the judgment of the DLHT was delivered something which prohibited her from taking the necessary step to appeal within the prescribed time.

Two, assuming that she was still suffering after the date of delivery of the DLHT's judgment on 08/03/2019 and yet, there is no sufficient evidence or explanations as to when the appellant recovered from her sickness to justify the reasons advanced for delay. In that view, can it be said that in absence of good cause to account for each day of delay the applicant may be believed that she delayed to file her appeal due to sickness? Obviously, the answer is negative. As it was explicated in the case of **Pastory J. Bunonga v. Pius Tofiri** (supra); with all fairness the facts cannot be founded on mere allegations as demonstrated by the learned advocate for the applicant. In my view, the applicant was duty bound to establish and prove that she fell sick and for the reason of sickness she was reasonably barred from taking the necessary steps to lodge the intended appeal.

Three, the mere medical documents that she was sick on diverse dates before delivery of the impugned decision, in my opinion, this cannot be relied on by the applicant to justify the delays for one reason that in the circumstance of this case, it is too hard to account them as an excuse that she then had an indefinite protracted sickness in absence of sufficient proof. It is clear from the court record that there are no further medical documents to prove that the applicant was sick for the whole period, a situation which paralysed her from taking the necessary steps including appropriate legal action. In the circumstance, these two

medical documents have nothing to do with the instant application and I accord no weight as the same have failed to account for each day of delay to warrant this court exercise its discretionary power.


Four, upon going through the decision of the DLHT dated 08/03/2019, I noted that appellant's chance to succeed is very minimal because in my view, ostensibly there is no any illegality in the impugned decision.

For the above reasons, I am satisfied the instant application is non-meritorious to the extent of my findings. The applicant has failed to account for each day of delay and I thus hereby dismiss it with no order as to costs.

Order accordingly.

DATED at MOROGORO this 19th day of January, 2022.




M. J. CHABA
JUDGE
19/01/2022