

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOB A DISTRICT REGISTRY

AT BUKOBA

MISC LAND APPLICATION NO. 132 OF 2022

*(Arising from Land Appeal No. 68 of 2020 before the district Land and Housing Tribunal at Bukoba
and originating from Civil Case No. 01 of 2020 of Rubafu Ward Tribunal)*

ABDALA RAMADHAN..... APPLICANT

VERSUS

JOYCE BALIGE.....RESPONDENT

RULING

08/04/2022 & 27/04/2022

NGIGWANA, J.

The applicant is seeking for extension of time within which to appeal before this court out of time against the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Civil Appeal No. 68 of 2020 delivered on 5/8/2021. The court is also asked to grant costs and any relief as it may deem fit to grant.

The application was brought by way of chamber summons made under section 38 (1) of the Land Disputes Courts Act Cap. 216 R: E 2019 and supported by an affidavit sworn by the applicant Abdala Ramadhani. The chamber summons was duly served to the respondent who filed a counter affidavit to contest the application.

Briefly, the facts leading to this application as can be deciphered from the affidavit and the record are to the effect that; before Rubafu Ward Tribunal

the respondent filed a suit against the applicant claiming that the applicant had trespassed into her land. The matter ended in the respondent's favor.

Aggrieved by the decision of the Ward Tribunal, Abdala Ramadhani (Applicant) appealed to the DLHT to challenge the decision of the Ward Tribunal. After hearing the parties, the DLHT dismissed the appeal for want of merit. The decision of the Ward Tribunal was confirmed.

Again, the applicant was aggrieved by the decision of the DLHT, but lodged no appeal within the prescribed time hence this application. When the matter came for hearing, the applicant was represented by Mr. Gildon Mambo, learned advocate while the respondent was represented by Ms. Joanitha Jonathan, learned advocate.

Supporting the application; Mr. Gildon Mambo adopted the applicant's affidavit to form part of his submission. The learned counsel submitted that the grounds for extension of time are two, the first being sickness and the second being illegality committed by the Ward Tribunal. Mambo added that the applicant was seriously sick from 30/09/2021 – 03/11/2021 hence was under treatment. Mambo further argued that due to sickness, the applicant failed to lodge an appeal within the prescribed time. That following his discharge on 03/11/2021, he spent 14 days seeking for legal assistance whereas on 17/11/2021, he filed this application on 17/11/2021, thus the delay was not deliberate. The learned counsel referred me to the case of **Pimak Profesyonel Mutfaki Ltd Sirketi versus Pimak Tanzania Limited and Another**, Misc. Commercial Application No. 55 of 2018 (CHD) where the court held that sickness constitute sufficient cause for extension of

time. Also cited the case of **Mase Simon Rhobin versus Gree star English Mechum School**, Misc. Labour Application No. 9 of 2019 HC Shinyanga Registry where it was held that time spent to look for an advocate or legal assistance is sufficient reason for extension of time.

As regard the issue of illegality as a ground for extension of time, Mr. Mambo argued that the Ward Tribunal was not properly constituted on 13/08/2020 when the applicant adduced his evidence, likewise on 03/09/2020 when the respondent tendered the exhibit, and in some sittings where quorum was shown, gender was not shown. Mambo referred me to the case of **Julius S. Mshai versus Daudi Mlumba**, Misc. Land Case No. 41 of 2008 in which the quorum of the Ward Tribunal was insisted. As regard the issue of gender in the Ward tribunal, the learned counsel referred me to the case of **Mariam Madali versus Hadija Kihemba**, Misc. Land Case No. 16 of 2019 in which it was held among others that the names and gender of the members participating in a case in the Ward Tribunal must be shown in order to ascertain its composition as whether it was in compliance with the law; since the tribunal which is not well composed is as good as a non-existing tribunal. Mr. Mambo ended his submission urging the court to grant the application.

Opposing the application, Ms. Joanitha learned advocate for the respondent submitted that in Application No. 68 of 2020 the judgment was delivered on 05/08/2021, and the copy of the judgment was ready for collection on 12/08/2021. That the applicant became sick on 30/09/2021, therefore, he ought to have accounted for each day of delay between the date when the judgment was delivered to 30/09/2021 when he became sick. That in all other dates, the applicant was not admitted in the Hospital save for 7 days.

She added that, the applicant had the duty to account for each day of delay. She referred me to the case of **Ramadhani J. Kihwani versus TAZARA**, Civil Application No. 401/18 of 2018, where the Court of Appeal insisted that even a single day of delay has to be accounted for. She also submitted that extension of time can only be granted upon demonstration of the sufficient cause. She referred me to the case of **Ibrahim Zacharia and Another versus Zubeda Selemani**, Misc. Land Case No. 96 of 2016 where it was emphasized that demonstration of sufficient cause is a must in order to grant extension of time.

As regard, the issue of illegality, Ms. Joanitha argued that the same does of feature in the applicant's affidavit, thus urged the court to disregard it.

In Rejoinder, Mambo stated that the right to appeal against the judgment of the DLHT exercising its appellate jurisdiction is 60 days, thus the applicant became sick while within the time to appeal, and he was not precluded from filing the appeal even a day before the expiry of 60 days. That the issue of sickness is a good ground for extension of time. He insisted that the judgment of the Ward tribunal is tainted with illegalities.

I have considered the submissions of the parties, the affidavit and counter affidavit registered as well as applicable laws. The question that follows is whether the applicant has been able to show good cause/sufficient cause for the court to exercise its discretionary power to grant extension of time.

Section 38(1) of the Land Disputes Courts Act Cap. 216 R: E 2019 provides that;

"Any party who is aggrieved by the 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."

However what amounts to good cause has not been defined. In the case of Oswald **Masalu versus Tanzania Processing Ltd**, Civil Application No. 13 of 2010, the Court of Appeal of Tanzania held that,

"What constitute good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one, is dependent upon a party seeking extension to prove the relevant material in order to move the court to exercise its discretion"

It was also heard in the case of **Mumello versus Bank of Tanzania** (2006) EA 227 that an application for extension of time is entirely in the discretion of the court to grant or to refuse, and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause.

In the matter at hand, the DLHT delivered its decision on 05/08/2021, while still within the appeal prescribed time, he became sick as stated by Mr. Mambo. The affidavit is to that effect and the medical chit was annexed to the affidavit. The argument that in most of the time, the applicant was an

outpatient does not mean that he was not sick since sickness is a condition which is experienced by the person who is sick. It is not a shared experience. Addressing the question of sickness, the Court of Appeal of Tanzania in the case of **John David Kashankya versus the Attorney General**, Civil Application No. 1 of 2012 (unreported) Ltd this to say;

"Sickness is a condition which is experienced by the person who is sick. It is not shared. Except for children who are not yet in position to express their feelings, it is the sick person who can express his/her condition whether he/she has strength to move, work and do whatever kind of work he is required to do. In this regard, it is the applicant who says he was sick and he produced medical chits to show that he responded to a doctor for checkup for one year. There is no evidence from the respondent to show that after the period, his condition immediately became better and he was able to come to court to pursue his case. Under such circumstances I do not see reasons from doubting his health condition. I find the reason of sickness given by the applicant sufficient reason for granting the application for the extension of time."

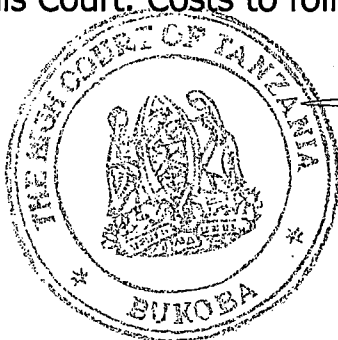
Being guided by the herein above Court of Appeal decision, it is the finding of this court that in the matter at hand the respondent did not dispute the fact that the applicant was sick. Also, there is no evidence provided by the respondent to show that the applicant being an outpatient for most of the time could move, work, and do whatever kind of work he was required to do.

It is again not disputed that the applicant from 03/11/2021, the applicant's health became a bit better, thus managed to file this application on 17/11/2021. Mr. Mambo submitted that the applicant spent 14 days to look

for an advocate. There is no doubt that a person has the right to be represented by an advocate but also the right to look for an advocate of his/her own choice who can draft proper documents for him/her. I find that 14 days spent by the applicant who is a lay person who resides in the Rural areas where advocates are not available, reasonably constitute sufficient cause for the grant of extension of time.

In the up-short, I am satisfied that the ground of sickness and the 14 time after recovery spent by the applicant to look for an advocate constitute sufficient cause to warrant me to exercise the discretion of granting extension of time. Furthermore, I see no compelling reasons to address the issue of illegality.

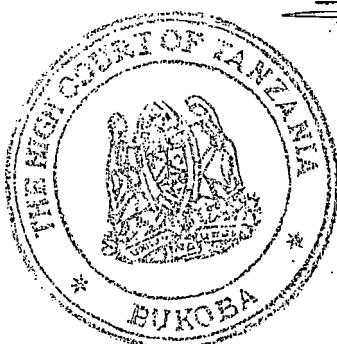
All said, I find merit in this application and grant it. The applicant is given 30 days from the date of this ruling within which to file the intended Appeal to this Court. Costs to follow the event in the appeal. It is so ordered.




E.L. NGIGWANA
JUDGE

27/04/2022

Ruling delivered this 27th day of April, 2022 in the presence of the Applicant in person, Respondent and her advocate Ms. Joanitha Jonathan, Mr. E.M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C.




E.L. NGIGWANA
JUDGE

27/04/2022