

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MWANZA

AT MWANZA

MISC. CIVIL APPLICATION NO. 90 OF 2021

(Arising from Judgment and Decree of the District Court of Sengerema in Civil Appeal No. 33 of 2020 and originating from the decision of Nyamatongo Primary Court in Civil Case No. 21/2020)

MASALU KAZINZA APPLICANT

VERSUS

CHRISTINA BONIPHACE (Administratrix of the Estate of the

Late BONIPHACE SANYENGE) RESPONDENT

RULING

19/4/2022 & 10/6/2022

ROBERT, J:-

This is an application for extension of time to file an appeal out of time against the Judgment of the District Court of Sengerema. The application is supported by an affidavit of the Applicant, Masalu Kazinza and resisted by a counter-affidavit filed by the Respondent herein.

The Applicant was the appellant in Civil Appeal No. 33 of 2020 before the District Court of Sengerema which was decided in favour of the Respondent on 30th day of March, 2021 by upholding the decision of

Nyamatongo Primary Court in Civil Case No. 21/2020. Aggrieved, the Applicant is now seeking to appeal to this Court but he is outside the prescribed time to file an appeal hence this application.

At the hearing of this application, the Applicant had two reasons to back up his application for extension of time which were argued orally by Mr. Nestory Joseph, learned counsel for the Applicant and resisted by the Respondent who appeared in person without representation.

Highlighting on the first ground, Mr. Joseph argued that, the Applicant got sick at the time of his preparations to file an appeal, which is, from 19th April, 2021 to 17th July, 2021. He was paralyzed and therefore he could not move to process his appeal. It was also stated in the Applicant's affidavit that during the period of his sickness he was receiving treatment from a traditional healer at the village of Ngoma.

The second ground in support of this application is illegality. Counsel for the Applicant argued that, the District Court of Sengerema erred by upholding the decision of the Primary Court which had no jurisdiction to entertain a dispute involving land matters. He maintained that the said illegality is a good reason for extension of time regardless of the time lapsed.

To support his argument, he cited the case of **Zacharia Elias Mabula vs. Managing Director Sinohydro Cooperation**, Misc Land Application No. 93 of 2019 which made reference to the Court of Appeal decision in the case of **VIP Engineering and Market Ltd and Three Others vs Citibank Tanzania Ltd**, Consolidated Civil Reference No. 6,7, and 8 of 2006 (unreported) where the Court of Appeal decided that illegality of the decision being challenged by itself constitutes a sufficient reason for extension of time.

On the basis of the reasons stated he prayed for this application to be allowed.

In response, the Respondent argued that, this matter did not involve land dispute. She clarified that, the Applicant happened to cut down trees in her farm and she filed a criminal case at the Primary Court against the Applicant which could not be adjudicated by the Land Tribunal. The primary Court decided in her favour and the Applicant did not appeal against the said decision. Afterwards, the Applicant filed a case at the District Court which he lost and failed to file an appeal on time.

With regards to the sickness of the Applicant, she argued that there is no proof that the Applicant's legs were paralyzed because the Applicant was appearing in the other land case which was ongoing between them. Hence, she objected to the sickness as a reason for the alleged delay.

In a brief rejoinder, Counsel for the Applicant maintained that the District Land and Housing Tribunal was the proper Court to handle the matter which is the subject of this application. On the issue of sickness of the Applicant, he maintained that the said sickness was not known to the Respondent but that does not mean the Applicant was not sick. He also maintained that, the Respondent did not bring evidence to establish that the Applicant was attending Court proceedings in the other case at the time of the alleged sickness.

Having heard rival submissions of parties and examined records of this case, I will now proceed to make a determination on the merit of this application.

On the first ground argued in support of this application, this Court is in agreement with the Respondent that, the Applicant did not bring any evidence to prove his sickness at the time prescribed for appeal. Further to

this, I have noted that, the decision of the District Court sought to be challenged through this application was delivered on 30th March, 2021 while the Applicant's sickness started on 19th April, 2021. This means the Applicant had 19 days from the delivery of the decision of the District Court to the alleged sickness which he failed to account for. This Court is aware that sickness is a good ground for extension of time however, it has to be proved by evidence establishing not only that the Applicant was sick but also that his sickness happened at a time when he is required by law to take action in respect of the matter which he seeks extension of time for. That said, I find this ground to be wanting in terms of evidence and therefore lacks merit.

I have also looked at the issue of illegality raised by the Applicant as a second ground for extension of time. The applicant faulted the District Court for upholding the decision of the Primary Court on grounds that that the Primary Court had no jurisdiction to entertain a dispute involving land matters.

I have noted that this issue was also raised by the Applicant at the District Court in Civil Appeal No. 33 of 2020 and decided comprehensively by the District Court. I am particularly fortified by the findings of the District Court at page 4 of its judgment. The District Court made a finding that Civil

Case No. 21/2020 at Nyamatongo Primary Court originated from Criminal Case No. 63 of 2019 at Nyamatongo Primary Court where the Applicant herein stood charged, convicted and sentenced for committing the offence of malicious damage to property. As a consequence, the Primary Court ordered the Applicant to pay compensation to the damage caused to the land in dispute, the Applicant did not appeal against that decision. Thereafter, the Respondent instituted a civil suit to execute an order for payment of execution (Civil Case No. 21 of 2020) which went to the District by way of appeal in Civil Appeal No. 33 of 2020. Hence, the District Court decided that the Primary Court did not decide on a land dispute which it has no jurisdiction to entertain as alleged by the Applicant herein.

This Court is in agreement with the findings and analysis of the District Court that the decision of the Primary Court of Nyamatongo in Civil Case No. 21/2020 which gave birth to Civil Appeal No. 33 of 2020 being a suit instituted to claim payment of compensation ordered in Criminal Case No. 63 of 2019 was not a dispute involving land matters which the primary Court has no jurisdiction to entertain. Hence, this Court finds that there is no issue of illegality to be determined by the appellate Court.

As a consequence, this Court finds no merit in this application and dismisses it with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "K.N. Robert", is written over the typed name.

K.N. ROBERT
JUDGE
10/6/2022