

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISCELLANEOUS LAND APPLICATION NO. 1 OF 2022

ELINI SIMONIAPPLICANT

VERSUS

AMRI MASUDI.....RESPONDENT

EX PARTE RULING

28/3/2022 & 20/4/2022

K. MANYANDA, J.

This court is being moved by the Applicant, Elini Simon, under section 1(1) of the Law of Limitation Act, [Cap. 89 R. E. 2019] and section 38(1) of the Land Disputes Courts Act, [Cap. 216 R. E. 2019] to extend the time within which to lodge an appeal out of the prescribed time.

The Applicant presented proof of service to the Respondent that she served him but the Respondent refused to attend in court for the hearing.

This court after inspecting the summons, found that it is true, the Respondent signed the summons acknowledging service but he has not attended in court for hearing of the application; hence the same was ordered to be heard *ex-parte*.



The Applicant prosecuted the application in person. She adopted the chamber summons and her affidavit. She submitted that she filed Land Application No. 6 of 2016 at Bitale Ward Tribunal which was on 29/12/2016 decided in favour of the Respondent. She appealed to the District Land and Housing of Kigoma District (DLHT) which dismissed the same without costs on 9/9/2021.

Undaunted, she intends to appeal against the dismissal of her appeal to this Court, but she found herself out of time.

She filed the instant application on 22/12/2021 making a delay of 74 days. She accounted for this delay that she was admitted in hospital for treatment of her three (3) years old son.

That she acted immediately after been discharged, by filing the current application.

I have gone through the affidavit and found that she swore in paragraph 6 stating the reasons for delay in the following words: -

"That, the reason for failure to file out of time (sic) is due to severe sickness of the Applicant's son aged three years and was admitted and later referred to Maweni Hospital, the Applicant as a mother has (sic) a duty of care over the son throughout [his] admission in hospital".

Moreover, this court has perused the medical chits she attached as Annexures "E2" to the affidavit and found that on 18/10/2021 the Applicant took her sick child known as Essau Nashoni of 3 years old to Kizenga Dispensary for treatment, however owing to seriousness of the disease, the son was referred to Bitale Health Center where he was admitted.

Since her son was a child of such tender years she had to admitted with her sick baby. She stayed at Bitale Hospital until on 4/11/2021 when she was again referred to Maweni Regional Referral Hospital where she was further admitted. There is no indication as to when she was discharged. But she contended that she acted immediately by filling this application after been discharged. There is no any evidence to controvert this fact.

In my opinion the Applicant has accounted for delay as explained above. Hence, I find the application as meritorious.

In the result I do hereby grant the application and extend the time for the Applicant to file her appeal by sixty (60) days from the date of this ruling. No order as to costs.

It is so ordered.




F.K. MANYANDA

JUDGE

20/4/2022