

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB REGISTRY OF MANYARA
AT BABATI

MISCELLANEOUS LAND APPLICATION NO. 01 OF 2022

*(Originating from Land Application no. 17 of 2022 of the District Land and Housing
Tribunal for Kiteto at Kibaya)*

SEIF SAID MUSSA.....APPLICANT

VERSUS

ANDREW JOSEPH MASSAWE.....RESPONDENT

RULING

21st & 28th February, 2023

Kahyoza, J.:

Andrew Joseph Massawe (the Respondent), successfully, sued **Seif Said Mussa** (the Applicant), for land ownership, at the District Land and Housing Tribunal for Kiteto at Kibaya (DLHT). The DLHT delivered the judgment on the 27th day of May 2022, in the presence of both parties.

Aggrieved, **Seif Said Mussa** applied for copies judgment and decree on the 27th day of May 2022 intending to appeal. He obtained copies judgment and decree on the 29th day of June, 2022 and 13th day of July, 2022, respectively. After obtaining copies of judgment and decree, he did not appeal immediately. When he wanted to appeal, he realized he was

time barred. He filed the current application seeking for extension of time to appeal out of time.

Parties opted to hear the application by way of written submission. Both parties filed their submissions as directed.

It is settled that a person applying for extension of time must adduce good cause for delay. Section 41 (1) and (2) of the **Land Disputes Courts Act**, [Cap 216, R.E 2019] provides:-

"41(1) Subject to the provisions of any law for the time being in force all appeals, revisions and similar proceedings from or in respect of any proceeding in a District Land and Housing tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

*Provided that, the High Court may **for the good cause**, extend the time for filing an appeal either before or after the expiration of such period of forty five days."*

The issue is whether **Seif Said Mussa** applicant adduced good cause for delay. There is no hard and fast rule as to what amounts to good cause. The Court of Appeal of Tanzania took that stance in the case of

Masalu v. Tanzania Processing Ltd, Civil Application No. 13 of 2020

held that-

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

The applicant adduced the cause of delay in his affidavit that he delayed to appeal because the DLHT delayed to supply him documents for purposes of appeal and because he was sick. He deponed under paragraph 13 of the affidavit-

"that the delay to file appeal has not been occasioned by negligence or inaction on the party(sic) of the applicant but rather it was occasioned by the delay to have him supplied with the necessary documents and medical condition of the applicant herein."

To support the grounds for delay, the applicant submitted that he delayed because he was suffering from low blood pressure and that he resided far from the High court registry.

On the other side, the respondent, in his counter affidavit, prayed the application to be dismissed, because the applicant adduced no good cause for delay. He refuted the allegation that the applicant delayed because he was sick. During the hearing the respondent added that the applicant showed in his affidavit that he was treated at Muheza District Hospital on the day the ruling was delivered. It was unlikely for him having attended the DLHT at Kibaya for delivery of judgment to travel to back home and the same day go Muheza District Hospital for treatment. He emphasized that it was possible for the applicant having attended the DLHT at Kibaya for judgment to go to Muheza District Hospital for treatment on the same day, if and only if, he took a flight from Kibaya to Muheza District Hospital.

It is settled that when computing time for delay, time spent to obtain a copy of decree is excluded. I will therefore, exclude the period from the date of delivered of the judgment until the time the applicant obtained copies of the judgment and decree. Thus, the period from the date of delivery of judgment up to 13th July, 2022 when the applicant was supplied with a copy of the decree is excluded. Section 19(2) of the **Law of Limitation** [Cap. 89 R.E 2019] (**LLA**) provides that-

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment complained of was delivered, the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded"

The applicant was required to appeal within 45 days from the date he obtained copies of judgment and decree, that is from 13th July, 2022. The period of 45 days expired on 27th August, 2022. For that reason, the applicant is duty bound to account for the period from 28th August, 2022 to 16th day of November 2022 when he instituted the current application. It is trite law that a person applying for extension of time must account for all period of delay. The Court of Appeal in **Hassan Bushiri v. Latifa Iukio Mashayo**, CAT Civil Application No. 3 of 2007 (unreported), held that-

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

The applicant's reason for delay apart from the DLHT delaying to supply to him copies of necessary documents, was that he was sick and released from the so called "close medical checkup" the 30th day September 2022. He added that on the 1st October, 2022, he made some consultations, and

on the 3rd day of October he managed to engage an advocate and this application was filed on 16th day of November. To support the contention that he was sick, the applicant attached a medical chit to show that he attended Muheza District Hospital for treatment on 27th July, 2022. The respondent refuted the allegation by submitting that the applicant could not have attended Muheza District Hospital the same day he attended the DLHT at Kibaya for delivered of judgment. Sickness is good cause for delay. The Court of Appeal in **John David Kashekya vs, AG**, Civil application No. 1/2012 (CAT- unreported) that-

"...sickness is condition which is experienced by the person who is sick. It is not a shared experience. Except for children who are not yet in a position to express their feelings, it is the sick person who can express his or her condition whether he or 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 reported to a doctor for check-up for one year. There is no evidence from the respondent to show that after that period, his condition immediately became better and he was able to come to Court and pursue his case. Under such circumstances, I do not see reasons for doubting his health condition. I find the reason of sickness given by the

applicant to be sufficient reason for granting the application for extension of time."

I am of the firm view that once a person proves that ill health prevented him to take legal action, that amounts to a good cause for delay. See **Emanuel R. Maira vs The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported), where it was 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,"

The applicant in the present case, proved neither that he was sick and excused from duties nor that he was bedridden, thus, not able to pursue his appeal.

In addition, the applicant's evidence that he was sick, are prescription sheet and NHIF form which is not readable showing that he attended the hospital on the same day he attended the DLHT for delivered of judgment. Like the respondent, the applicant did not convince me that he attended the DLHT and attended Muheza District Hospital for treatment the same day. As the applicant argued it is very unlikely for a person to attend the DLHT at Kibaya and travel by public transport to Muheza District Hospital for treatment. Thus, the applicant's affidavit contains lies, it cannot for that reason support an application for extension of time. It is settled that an

affidavit containing false information cannot be relied upon by the Court to decide the matter. The Court of Appeal pronounced itself in **Damas Assey and Another vs Raymond Mgonda Paula and 8 Others**, Civil Application No. 32/17 of 2018, where it cited with approval its decision in **Ignazio Messina vs Willow Investments SPRL**, Civil Application No. 21 of 2001 that:

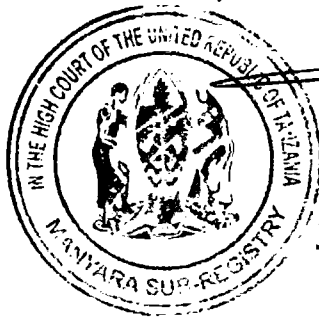
*"An affidavit which is tainted with untruths is no affidavit **at all** and cannot be relied upon to support an application. False evidence cannot be acted upon to resolve any issue."*

For the sake of argument let us agree that the applicant was sick and he was released from "close medical checkup" on 30th September, 2022. On 1st October, 2022 he consulted and engaged an advocate on 3rd October, 2022. The applicant lodged the application on 16th November, 2022, that is 44 days from the day he engaged an advocate. There is no reason why the advocate took 45 days to lodge an application. Thus, the applicant did not account for the period of delay from 3rd October, 2022 to 16th November, 2022. For that reason, the applicant did not account for period of delay.

In the upshot, I find that the applicant failed to account for the period of delay or to establish that he delayed due to sickness. Consequently, I hold that the applicant has not adduced sufficient reasons for delay and dismiss the application for extension of time for want of merit with costs.

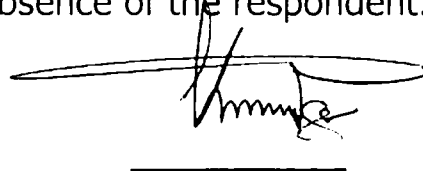
It is ordered accordingly.

DATED at Babati, this 28th day of February, 2023




J. R. Kahyoza
JUDGE

Court: Ruling delivered in the virtual presence of Mr. Seif Said Mussa, the applicant and the absence of the respondent. Ms. Dora (RMA) present.



J. R. Kahyoza
JUDGE
28/02/2023