

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA- LAND DIVISION.

LAND APPEAL NO.51 OF 2022

(C/f Misc. Application No. 59 of 2021 in the District Land and Housing Tribunal for Arusha at Arusha.)

JOHN KAMILI MARIWA.....APPELLANT

Vs

CRDB BANK PLC.....1ST RESPONDENT

JOYCE JOHN MARIWA.....2ND RESPONDENT

NKAYA COMPANY LIMITED.....3RD RESPONDENT

JUDGMENT

Date of last order:7-3-2023

Date of Judgment:31-3-2023

B.K.PHILLIP,J

Aggrieved by the Ruling of the District Land and Housing Tribunal for Arusha at Arusha, (Henceforth "the DLHT") in Miscellaneous Application No.59 of 2021, the appellant herein lodged this appeal on the following ground;

- i) That the trial chairman erred in law and fact by holding that the applicant's reason for extension of time had no merit while the trial chairman acknowledged and did not deny the applicant's sickness.

The appeal was heard viva voce. At the hearing of this appeal, the learned Advocate Ismail Shallua appeared for the appellant. The 1st and 3rd

respondent were represented by the learned Advocate Mworio. The 2nd respondent appeared in person, unrepresented.

Mr. Shallua's submission was to the effect that the Chairman of the DLHT erred in law and fact to deny the applicant the extension of time in total disregard of the fact that the applicant presented before the DLHT a medical chit which shows clearly that he was sick and was directed to attend medical check-up frequently. The applicant's affidavit in support of his application contains all details on the dates the applicant used to attend to hospital. In his Ruling the Chairman of the DLHT noted that the applicant was ordered to attend to hospital for medical check-up but was doubtful on whether the applicant really attended to hospital for check-up as directed by the Doctor.

Furthermore, Mr. Shallua argued that the Chairman's doubts aforesaid and final findings were erroneous because the provision of section 14(1) of the Law of Limitation Act under which the applicant's application was preferred requires the applicant to show reasonable ground for the delay and that is what he did. He proved that he was sick. Therefore, he accounted for the days of delay sufficiently. Mr. Shallua maintained that this court has discretionary powers to either grant this application or refuse to do so, but that discretion has to be exercised judiciously. To cement his arguments he referred this court to the case of **Murtaza Mohamed Raza Viran and Mrs Rubab Mohamed Raza Viran Vs Mehboob Hassanali Versi , Civil Application No 448 /01 of 2020** (unreported) in which the Court granted extension of time on the ground that the applicant was sick. It held as follows;

"Given sickness is a condition which is experienced by a sick person and since the 1st applicant said due to sickness ,he failed to serve the respondent in time and has attached evidence to prove that he was sick ,then I see no reason to doubt his condition at that time"

Mr.Shallua urged this court to allow this appeal.

I rebuttal, Mr. Mworio started his submission by expressing his opinion in respect of the case of **Murtaza Mohamed Raza Viran** (supra) that the same is distinguishable from the fact of the instant application because in that case, the applicant presented in court a medical chit which showed the duration within which he was sick and there was a delay of forty five (45) days only. He went on arguing that in the application at hand there is an inordinate delay of five (5) months. The medical chit relied upon by the applicant shows that he was discharged from hospital on 16th September 2020,thus thereafter he was an outpatient capable of making follow ups of his affairs. He further contended that the applicant failed to substantiate that throughout the period of delay of five months he was spending most of his time at the hospital.To cement his arguments he referred this court to the case of **Elisha Magene Vs Nyangi Ogigo, Civil application No.45/08 of 2018**, (unreported) in which the Court of Appeal declined to grant extension of time basing on the ground that the applicant was sick whereas the facts of the matter and court's records revealed that he was capable of making a follow-up of the matter if at all he wanted to do so. The Court Appeal had this to say;

" The applicant is the one who sought leave to appeal to the Court of Appeal and his inaction seems to me unexplainable despite what happened to him on 19th July

2019...On the totality of the above assessment and the reasoning, I have failed to find any convincing reasons which hindered the applicant from following up on his matter. The ill-health reason information is so spread out to be relied on as a good case....there has been sloppiness on part of the applicant that disentitles him from benefitting the discretion of the court contained in Rule 10 of the Rules being excised in his favour..."

Mr.Mworia maintained that the applicant exhibited sloppiness of the highest degree for failure to make a follow-up of his application and take proper steps timely. He was in agreement with the views expressed by the chairman of the DLHT in the impugned Ruling that the applicant failed to account for the days of delay. He prayed for the dismissal of this appeal.

The 2nd respondent was the applicant's ex- wife. Her response was very brief. She submitted that the applicant was sick. She received the information about his sickness from her child who stays with the applicant.

In rejoinder, Mr. Shallua conceded that for an application for extension of time to be granted, there should not be inordinate delay. He distinguished the case of **Elisha Magene** (supra) from the instant appeal on the ground that the same was about an applicant who was an outpatient which is not the case in the instant appeal. He argued this court not to rely on the case cited by Mr. Mworia. He maintained that the facts and holding of the court in the case of **Murtaza Mohamed Raza Viran** (supra) caters for all circumstances in which the applicant pleads sickness as a ground for delay. He was emphatic that the applicant accounted for all days of delay sufficiently.

Having dispassionately considered the competing submissions made by the learned advocates appearing herein, I am of the settled opinion that

the task before me is to determine whether or not the applicant has adduced good cause for the delay to warrant the grant of an order sought in this application. It is a trite law that in application for extension of time like the one at hand the applicant has to account for the days of delay by giving good causes for delay among other things. There is no hard and fast rule on what amounts to "good/ sufficient cause" for the delay. However, some of the conditions to be taken into consideration in making a determination of an application for extension of time like the one at hand were stipulated in the case of **Lyamuya Construction Company Limited Vs Board of Trustee of Young Women's Christian Association of Tanzania , Civil application No. 2 of 2010** (unreported), to wit;

- i) The applicant must account for all period of delay.
- ii) The delay should not be inordinate.
- iii) The applicant must show diligence in the prosecution of the action that he intends to take.
- iv) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance/such as the illegality of the decision sought to be challenged.

The court's records reveal that the dismissal order intended to be set aside was made on 15th September 2020 and the application to set it aside was filed at the DLHT on 12th February 2021. The days of delay have to be reckoned from 15th September 2020. Therefore the applicant was supposed to account for more than 100 days of delay. The main reason advanced by the applicant for the delay is that he was sick. He

annexed to his affidavit a medical chit from Meru District Hospital which shows that he was admitted at that Hospital on 9th September 2020 and discharged on 16th September 2020. In addition, the aforesaid medical chit shows that the applicant was directed to go to the clinic monthly. Looking at the contents of the medical chit I have disclosed herein, with due respect to Mr. Shallua, I am not inclined to agree with his argument that after being discharged from hospital the applicant was not able to make a follow-up of his application. My stance is based on the doctor's instruction revealed in the medical chit, to wit; that the appellant was supposed to go to the clinic monthly not frequently as contended by Mr. Shallua in his submission and deposed in paragraph seven of the applicant's affidavit that he was advised to go for check-ups severally without doing hard work and stay at home. In fact, what is deposed in paragraph 7 of the applicant's affidavit is not true since it is contradictory to the contents of the medical chit relied upon by the applicant and annexed to his affidavit as "annexture A".

In addition to the above, the applicant has stated in his affidavit that he started making follow up of his application on 27th November 2020 when he was served with the 60 days notice of default by CRDB Bank Plc. Thereafter he learnt that his application was dismissed on 15th September 2020. What can be gathered from the applicant's affidavit is that he was capable of making a follow-up of his application but opted not to do so until when he was served with a notice of default. For ease of reference let me reproduce the paragraphs 6 and 7 of the applicant's affidavit hereunder;

"6. That it is until 27th November 2020 when CRDB Bank PLC served me with a 60 days notice of default then I made a follow up to the Tribunal and discovered application No.140 of 2019 was dismissed on 15/09/2020 for none appearance (A copy of the said dismissal order is hereby attached and marked as Annexure A2 and I crave leave of the Tribunal for it to form part of this affidavit)

7. That I was admitted in the hospital and kept there without been discharged as I was given a bed in the hospital ward and stayed in the hospital many days and I was discharged and advised to go for checkups severally without doing hard work and keep resting at home as shown in the attached annexure A1 hereto"

At this juncture, it is worthy stating the position of the law on an affidavit containing false information, to wit; the same is not supposed to be acted upon by the court. In the case of **Kidodi Sugar Estate and 5 others Vs Tanga Petroleum Co.Ltd, Civil application No. 110 of 2009** (unreported), the Court of Appeal said the following;

*" ..There is no doubt that the affidavit sworn to by Mr. Semgalawe in support of the Notice of Motion contains a falsehood with regard to the reason for the delay in serving the respondent with the necessary documents as required by law. Mr. Semgalawe stated under oath that he did not know the location of Latifa Law Chambers until 4th September 2009. There is however unchallenged evidence in the affidavit of Ally Hemed Said to the effect that Mr. semgalawe knew the address as early as April 2009 when he was served with final submissios in Commercial Case No. 29 of 2007 between the same parties. **surely, no court properly directing its mind to the dictates of justice can act on an affidavit which is based on a falsehood.**"*

(Emphasis added)

The above aside, the case of **Murtaza Mohamed Raza Viran and another** (supra) relied upon by Mr. Shallua in his submission is

distinguishable from the instant application because in that case the applicant after recovery from sickness he immediately did the needful. He served the memorandum of the appeal to the respondent despite the fact that he was late since 14 days had already expired from the date of filing the memorandum of appeal. Upon being informed by his advocate that he served the memorandum of appeal out of time he immediately filed the application for extension of time for serving the memorandum of appeal to the respondent. So, the delay was not inordinate. As I have elaborated earlier in this judgment the delay in this appeal is five months. After being discharged from the hospital the applicant did not bother to make a follow up of his application until when he was served with the 60 days notice of default by the 1st respondent. For avoidance of doubt, I wish to point out that I am inclined to agree with Mr. Shallua that the Chairman's doubts on whether the applicant really attended to the clinic were not justifiable in anyway. However, as I have endeavored to elaborate earlier in this Judgment , even if the appellant attended at the clinic as per the Doctor's directive, still he had time to make a follow up of his application if he wanted to do so since the Doctor directed him to attend at the clinic monthly. I have also noted that by the time the applicant was discharged from the hospital, the time for filing the application for setting aside the dismissal order had not yet expired hence, if the applicant was diligent enough in handling his application, he would have filed the application for setting aside the dismissal order within the time prescribed by the law. I find the case of **Elisha Mang'ehe** (supra) relevant in this appeal. It has



similar facts to this appeal since the applicant was not diligent in handling his application as was the applicant in **Elisha Mang'ehe** case (supra).

In the upshot, this appeal is dismissed. I give no order as to costs since the respondents did not pray for costs.

Dated this 31st day of March 2023




B.K.PHILLIP

JUDGE