

**IN THE HIGH COURT OF THE UNITED OF TANZANIA
(MOROGORO SUB-REGISTRY)**

AT MOROGORO

APPLICATION NO. 36 OF 2022

FRANCE PAULO MKOMANGIAPPLICANT

VERSUS

ASHIRI ALLY NYAMBI RESPONDENT

RULING

28th April, 2023

CHABA, J.

By way of chamber summons, the applicant moved this court under section 38 (1) of the Land Disputes Courts Act [Cap. 216 R. E, 2019] (the Land Disputes Act) seeking leave for enlargement of time to file an appeal out of time against the decision and order of the District Land and Housing Tribunal for Kilombero/Malinyi, at Ifakara (the DLHT). The application is supported by an affidavit deposed by Mr. France Paulo Mkomangi. In essence, the applicant is applying for the following orders: -

1. That, this Honourable Court be pleased to grant leave for an extension of time to file appeal out of time,
2. That, costs to follow the event, and
3. Any other relief(s) this Honourable Court may deem fit and just to grant.

The application is supported by an affidavit sworn by the applicant. The respondent, on the other hand, filed a counter affidavit objecting the application

on the ground that the applicant has failed to justify his application and to account for each day of delay.

Before going to the merits and demerits of the present application, a brief background leading to this application, as garnered from the applicant's affidavit, is very important. The DLHT for Kilombero/Malinyi, at Ifakara delivered its judgement on 17th May, 2022 in favour of the respondent. It appears that the applicant was unhappy with the decision of the DLHT but he was unable to file his appeal within the period prescribed by the law due to sickness. Thus, he found himself caught by the web of time limitation, hence this application.

At the hearing of this application, both parties appeared in persons, and unrepresented. With the parties' consensus, it was agreed that the application be argued and disposed of by way of written submissions. Both sides filed their respective written submissions in accordance with the court's scheduled orders.

Arguing in support of the application, the applicant submitted that, he was unable to file the intended appeal within the prescribed period on the ground of health condition (sickness). He highlighted that, sometimes on 14th July, 2022 while on safari in Dar Es Salaam region, he was hospitalised at Masiku Health Center for five days from 14th - 19th July, 2022 as exhibited in annexure FPM-1 attached along with his affidavit. To reinforce his argument, he invited this court to invoke the provisions of section 14 (1) of the Law of Limitation Act [Cap. 89 R.



E, 2019] on the ground that, it has power to grant the orders sought by the applicant.

Responding to the applicants written submission, the respondent challenged the validity of the medical report (Annexure FPM-1) and urged the court to verify its authenticity, contending that the same is vague and fabricated. He stressed that, the applicant lied that he was sick for five days where on 14th July, 2022 was admitted at Masiku Health Center and hospitalized until on 19th July, 2022 while on those days was within Malinyi District doing his day to day activities.

He highlighted further that, even if his lies will be received and accepted by the court, the truth is that the applicant did not mention the dates or even explain when he travelled from Malinyi to Dar Es Salaam and then came back from Dar Es Salaam to Malinyi. He insisted that, when the applicant was discharged from Masiku Health Center, he failed to account for other days of delays. He stated that, though the applicant was given sixty (60) days to appeal against the impugned decision of the DLHT for Kilombero/Malinyi delivered on 17th May, 2022 he failed to exert his own efforts to appeal within the prescribed period.

Having summarized and fully considered the rival contentions advanced by the parties in support and against the instant application, and upon considered the contents of an affidavit deposed by the applicant which lays the basis of this application, the main issue for determination is whether this application has merits or not.

To begin with, it is plain that the applicant is seeking for enlargement of time within which to file an appeal out of time. The provision of the law under which the applicant relied on to move this court is section 38 (1) of the Land Disputes Courts Act [Cap. 216 R. E, 2019], which provides that: -

"Any party who is aggrieved by the decision or order of the District Land and Housing Tribunal in exercise of its appellate or revisionary jurisdiction may within sixty days after the date of the decision or order appeal to the High Court (Land 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."

In view of the above, the next pertinent question for consideration, determination and decision thereon is whether the applicant has assigned good cause to warrant the court exercise its discretionary power for extending time to appeal. This position was well expounded by our Apex Court in the cases of **Sospter Lulenga Vs. Republic**, Criminal Appeal No. 107 of 2006, CAT - Dodoma (unreported); **Aidan Chale Vs. Republic**, Criminal Appeal No. 130 of 2003, CAT - Mbeya (unreported) and **Shanti Vs. Hindochi and Others [1973] EA 207**.

Now, coming to the matter at hand, the applicant submitted that his main ground of delay to file his appeal within the prescribed period was due to sickness. He described that while on safari to Dar Es Salaam region, he was admitted and hospitalized at Masiku Health Center for five days from 14th - 19th July, 2022. To

substantiate his averment, the applicant attached along with his affidavit an annexure marked as FPM-1 which is a medical chit to prove that he was sick.

I have it in mind that, sickness if proved can be a good cause for the delay.

See: Kapapa Kumpimbi Vs. Plant Manager Tanzania Brewers Ltd, Civil Application No. 6 of 2010 CAT at Mwanza and **Emmanuel R. Maira Vs. The District Executive Director Bunda District Council (Civil Application 66 of 2010) [2010] TZCA 87 (13 August 2010)**, extracted from (tanzlii.go.tz). Apart from proving sickness by medical evidence or document, the applicant must also show and establish how the sickness prevented him or herself from taking the required action or steps within time. This stance was explicated by this court (Rumanyika, J., As he then was) in **Pastory J. Bunonga Vs. Pius Tofiri**, Miscellaneous Land Application No. 12 of 2019 (unreported), wherein the Court observed that: -

".... Where it was on the balance of probabilities proved, sickness has been good and sufficient ground for extension of time yes. But with all fairness the fact cannot be founded on mere allegations. There always must be proof by the applicant that he fell sick and for the reason of sickness he was reasonably prevented from taking the necessary step within the prescribed time....."

Reading the contents of annexure FPM-1, the same indicates that the applicant was admitted on 14th July, 2022 pm at Masiku Health Center and accordingly

discharged on 19th July, 2022. According to the law, the appropriate time to lodge an appeal before this court is sixty (60) days. Therefore, counting from 17th May, 2022 when the impugned decision was delivered, it is obvious that sixty (60) days expired on 15/07/2022. As garnered from the chamber summons lodged by the applicant, the present application was brought in court and presented for filing in court on 26th July, 2022.

In view of the details, the applicant was therefore responsible to state and describe as well why he delayed to file his appeal within the period prescribed by the law. It therefore, goes without saying that the applicant was duty bound to account for each day of delay from 15th July, 2022 to 26th July, 2022 when the instant application was filed in court.

As correctly submitted by the respondent, though the applicant highlighted that the delay was attributed by the ground of sickness and perhaps prevented from filling his appeal on time, but the truth is, there is no sufficient explanation as to what exactly happened after he was discharged from the said health center on 19th July, 2022 up to 26th July, 2022 when the present application was filed. In my considered view, in absence of clear and sufficient explanations describing the reasons for delays to file the intended appeal out of time, no doubt that the answer must be in negative. The reasons assigned by the applicant seeking for enlargement of time have no merits and are unfounded and afterthought.



It should be noted that, a delay of even a single day must be accounted for as it was underscored by the Court of Appeal of Tanzania in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, CAT (unreported), wherein the Court observed that: -


" a day 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"

Besides, there are numerous precedents emphasising on the legal position as to the requirement to seek justice within the limited timeframe prescribed by the law. This principle was explicated in the cases of **Night Support (T) LTD Vs. Benedict Komba**, Revision No. 254 of 2008 (unreported) and **Tanzania Fish Processes Vs. Christopher**, Civil Appeal No. 161 of 1999, CAT (unreported). For instance, in the case of **Night Support (T) LTD** the Court observed that: -

"Limitation is material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to court as when he chooses".

In another case of **Alison Xerox Sila Vs. Tanzania Harbours Authority**, Misc. Civil Reference No. 14 of 1998, CAT (unreported), the Court held: -

"Lapse, inaction or negligence on the part of the applicant seeking extension of time, does not constitute sufficient cause to warrant extension of time".



From the above excerpt, the law of limitation on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web be it the plaintiff (applicant) or the defendant (respondent). **See: Mathew Martin Vs. Kahama Mining Corporation**, Civil Case No. 79 of 2006 (unreported).

From the foregoing, it is my holding that there was negligence on the part of the applicant to file his appeal in accordance with the law and worse still the applicant has failed to advance sufficient reasons to warrant this court to exercise its discretionary power to grant the orders sought for extending time for appeal.

Having so found and upon considering the position of the law, I am satisfied that the applicant has failed to persuade this court to grant leave for extending time to appeal out of time. The application is devoid of merit, and it is hereby dismissed in its entirety with costs. **It is so ordered.**

DATED at MOROGORO this 28th day of April, 2023.




M. J. CHABA

JUDGE

28/04/2023