

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MOROGORO DISTRICT REGISTRY
AT MOROGORO
MISC. LAND APPLICATION NO. 5 OF 2023
(Originated from Land Appeal no.2 of 2023, DLHT Ifakara)

AMANDA LIPAWAGA APPLICANT

VERSUS

DORA MWAKAYAI RESPONDENT

RULING

Date of last order: 28/03/2023

Date of ruling: 5/5/2023

MALATA, J

This application for extension of time is made under section 14(1) of the Law of Limitation Act, (Cap 89 RE 2019) and supported by the applicant's affidavit. The applicant is seeking extension of time within which to file an appeal arising from Land Appeal no. 2 of 2022 out time.

The respondent was served with application and filed counter affidavit opposing the application.

When this matter came for hearing both parties were in attendance, the applicant appeared through legal representative one Alto Adrian Mtungu through the Power of Attorney and the respondent was represented by Ms. Stumai Moshi, learned counsel.

In support of the application the applicant submitted that, the applicant filed this application after being aggrieved by the decision of District Land and Housing Tribunal (DLHT) dated 22/07/2020. The applicant didn't appeal within time due to sickness.

The applicant admitted that it is not stated anywhere that he was attending medication, no name of the Hospital, Health centre or dispensary. Further there is no proof that the applicant was sick for the entire two (2) years and five (5) months of delay commencing 22/07/2020 to 19/01/2023 when this application was filed.

In reply thereof, Mr. Stumai, the learned counsel prayed to adopt the counter affidavit in opposition of the application before the court. She submitted that for an application for extension of time to be granted there must be good cause for delay. To bolster her arguments, she cited the case of **Lyamuya Construction vs. The Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application no. 2 of 2010 at page 6 where the Court of Appeal established

factors to be considered in an application of the kind. The Factors includes but not limited to; **one**, the applicant has to account for all period of delay, **two**, delay should not be inordinate, **three**, applicant should show diligence not apathy, negligence or sloppiness in prosecuting the action, **four**, demonstration as to the presence of illegality of a decision or point of law.

Ms. Stumai further submitted that in the applicant's affidavit the reason for delay was sickness. In support thereto he attached sick sheet/ medical sheet, however the same doesn't indicate the name of the hospital, dispensary or health centre. The sick sheet mentions a date of 14/06/2020 as the date the applicant attended the medication which is the date before the judgement was delivered.

It was the learned counsel observation that the said medical sheet contains lies as there is no seal of the Hospital or name of the Doctor. She further submitted that the attached document controverts the affidavit which states that the applicant fell sick immediately after delivery of the judgement while the document shows the date more than one month before the judgement. It is was Ms. Stumai submission that as the applicant conceded that, the medical sheet doesn't indicate the name of the Hospital and date of medication there is no proof of sickness.

It was also submitted on reason given in paragraph 4 of the affidavit has nothing to do with the matter at hand as appeal is by applicant as an individual and not as an administrator.

She finally concluded her submission that, the failure to appeal in time was due to applicant's negligence and not otherwise. She thus prayed the application to be dismissed with costs.

By way of rejoinder the applicant admitted that it is true that the applicant is not administrator of her late husband's estate and the medical sheet did not mention the name of hospital, dispensary or health centre and that there is no proof of sickness for the entire period.

The issue for determination therefore is whether the applicant has shown good cause warranting this court to grant extension of time.

It is a trite Law that, for the applicant to be granted the extension of time, he must advance sufficient or good cause for the delay, that is the position as per the enabling section 14 of the law of limitation Act cited by the applicant.

*14. -(1) Notwithstanding the provisions of this Act, the court may, for any **reasonable or sufficient cause**,*

extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

The above provision makes it clear that, the court may extend time for institution of an appeal or application if it satisfied that, the applicant has given sufficient or good cause for the delay.

Certainly, there are no laid down variables or a clear definition of the phrase "good cause" when exercising the discretion under section 14(1) of the Law of Limitation Act. However, there are factors which the court considers when determining such kind of an application. This includes but not limited to:

- 1. the length of the delay;*
- 2. the reasons for the delay;*
- 3. the degree of prejudice the respondent stands to suffer if time is extended;*
- 4. whether the applicant was diligent; and*

5. whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged.

6. accounting each day of delay even a single.

The above principles have been maintained in numerous court decisions, to within the **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987, **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001, **Eliya Anderson vs Republic**, Criminal Appeal No. 2 of, 2013 and **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra) (All unreported).

In the present application, the reason for delay advanced by the Applicant is sickness.

Indeed, the law is settled that once sickness is established and proved as to justify the delay, it constitutes sufficient cause for extension of time. See the case of **Tiluhuma Pima vs. Malogoi Muhoyi**, Civil Application no. 418/ 08 of 2022, CAT at Mwanza (Unreported)

"The law is settled that once sickness is established and proved as to justify the delay."

However, in this case, the applicant did not make his case sufficiently, as to the sickness there was no proof of sickness. The hospital documents show that the applicant was sick between om 14/06/2020 but he filed the present application on 09/01/2023 without any explanation about it and accounting for each day of delay between July 2020 and 09/01/2023 when he filed the present application.

This court considered the circumstances of this case and whether the applicant has shown sufficient cause for delay to warrant extension of time. I am satisfied beyond sane of doubt that, based on the circumstances of this case, the applicant has miserably; **first**, failed to account for a delay of two years and five months' days as correctly submitted by Ms. Stumai, learned counsel

Second, there is no evidence that, the applicant was sick as the tendered hospital document bears no Doctor's or hospital name seal, thence, satisfied to be not genuine documents, **third**, the sick sheet or medical sheet indicate the dates before the delivery of judgement, thus irrelevant to the issue at hand as the applicant was required to account for delay after delivery of judgement not before, **forth**, the sick sheet mention only

one date 14/06/2020 which is before delivery of judgement, **five**, the applicant has shown negligence in pursuing for her rights as she failed to take action for the entire period of two years and five months.

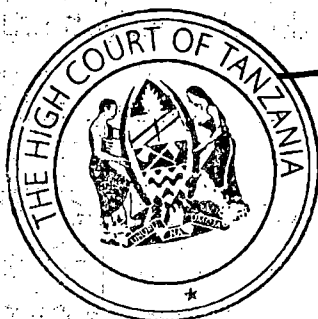
All said and done, I am with no malingering of doubt that, this court is satisfied that, the applicant has failed to discharge his duty of adducing good cause and account for the number of days delayed as required by law.

Thence, the judicial discretionary supremacies cannot be invoked in the circumstances of this application as there is no sufficient and good cause for delay.

In the upshot, I hereby dismiss the application for want of merits. As to the costs, each party shall bear his own costs.

IT IS SO ORDERED.

DATED at MOROGORO this 5th May, 2023.



G. P. MALATA

JUDGE

05/05/2023