

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LAND DIVISION
IRINGA REGISTRY
AT IRINGA**

MISC. LAND APPLICATION NO. 33 OF 2022

*(Originating from Land Application No. 17 of 2017 in the District Land and Housing Tribunal for
Iringa at Iringa)*

MANENO ADAM APPLICANT
VERSUS
MAJUTO KALOLO RESPONDENT

RULING

Date of last order: 24.05.2023

Date of Ruling: 02.06.2023

A.E. Mwipopo, J.

This is an application for an extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Iringa at Iringa (DLHT). The application is by way of chamber summons supported by an affidavit sworn by Maneno Adam, the applicant herein. The applicant is praying for the following orders:-

- 1. For granting of an extension of time to appeal out of time.*
- 2. For any other order the Court may deem just and equitable.*

Majuto Kalolo, the respondent, filed a counter-affidavit opposing the application.

The case's background reveals that the applicant instituted the Land Application No. 17 of 2017 in the District Land and Housing Tribunal for Iringa at Iringa, suing the respondent for encroaching into his land located in Tagamenda area in Iringa Rural District. The trial Tribunal received the evidence from both sides and delivered its decision on 28.06.2019. In its decision, the trial Tribunal dismissed the case with costs for want of merits and ordered each party to remain in his land. The applicant was not satisfied with the decision of the trial DLHT, and on 04.10.2019, he filed Misc. Land Application No. 05 of 2019 requesting this Court to extend the time of filing the appeal out of time. On 24.03.2020, the applicant decided to withdraw the application, and the Court marked the application as withdrawn without costs. The applicant filed the present application for an extension of time on 31.10.2022, seeking this Court's permission to file the appeal against the decision of trial DLHT out of the prescribed time.

On the hearing date, both parties were present in person. The Court invited both parties to make their submissions.

The applicant said in his submission that he had two reasons for the delay in filing an appeal out of time in his affidavit. These reasons are found in paragraphs no. 4 and 5 of the affidavit. The first reason is that he was sick from 27.02.2019 to 29.11.2021 and was admitted for treatment at Benjamini Mkapa Hospital in Dodoma. He said that he is still attending a clinic at Iringa Regional Referral Hospital to date, as the attached copies of the hospital documents show. He said that for this reason of sickness, he failed to file an appeal within time.

The applicant's second reason for filing this application for an extension of time is the presence of apparent illegality in the record of the tribunal court's proceedings. He said that the proceedings before the trial DLHT show that only one assessor provided his opinion. According to him, this is apparent illegality in the record, which need to be corrected by this Court.

The respondent replied to the applicant's submission and submitted that DLHT delivered its judgment on 28.06.2019 in his favour. On 28.10.2019, he appeared together with the applicant at the District Commissioner's office to try to settle the matter. Thus, it is not true that the applicant was admitted to the hospital for sickness during this time. He averred that on 07.07.2020, he was again served with a summons from

District Commissioner as the applicant is still complaining. On 29.07.2020, the applicant did write a document acknowledging that there is no conflict over the boundaries. On 04.01.2022, he was called by police and was informed that there was a summons following complaints from the applicant. He went to report to the police station on 06.01.2022, and the police told the applicant to go to Court if he was not satisfied.

On the issue of the composition of assessors during trial before trial DLHT, the respondent submitted that both assessors attended the hearing and they provided their opinion. It is not true that only one assessor provided an opinion.

In a short rejoinder, the applicant submitted that one of the assessors died before the DLHT concluded the trial. Hence respondent is not telling the truth. On the issue of sickness, the said sickness did not stop him from going to the office of the District Commissioner to find a solution to the dispute. He was sick, but he was seeking his right to the District Commissioner, and he also went to the Minister of Constitutional Affairs and Justice. He did not remain idle after the incident. The respondent did not comply with District Commissioner's recommendations on the dispute, and this is the reason for

applying for the extension of time to appeal against the decision of the trial DLHT.

Having heard the submissions by the parties, the crucial issue to be determined by this Court is whether the applicant has demonstrated sufficient or good cause to warrant an extension of time.

It is a settled law that this Court has the discretion to extend the time to file an appeal against the decision of the District Land and Housing Tribunal where the applicant has provided sufficient cause for the delay. The Land Disputes Courts Act, CAP. 216 R.E. 2019, provides in section 41(2) that the Court may, for good and sufficient cause, extend the time for filing an appeal after the expiration of 45 days for filing an appeal against the decision of DLHT provided by the law. The section reads as follows:-

"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 a good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

From the above cited section, this Court has the discretion to grant an application for an extension of time for a good cause. The exact position was stated in the case of **Martha Iswalile Vincent Kahabi vs. Marieth Salahe and three others**, Civil Application No. 5 of 2012, Court of Appeal of Tanzania at Mwanza, (unreported), where it was held that:-

"It is a common ground that an application of this nature is at the discretion of the Court. In exercising the discretion, the Court must be satisfied that there are good grounds to decide in favour of an application."

The said good cause depends upon the party seeking an extension of time to provide the relevant material sufficient to move the Court to exercise its discretion. [see. **Oswald Masatu Mwizarubi vs. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania] at Mwanza, (unreported).

Several factors must be considered before the Court decides to grant or not to grant an extension of time to appeal out of time. The Court of Appeal listed those factors in the case of **Lyamuya Construction**

Company Ltd vs. Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Application No.2 of 2010, Court of Appeal of Tanzania at Arusha, (unreported). In the above cited case, the Court of Appeal formulated some of the factors to be considered in the decision to grant an application for an extension of time. The said factors include the applicant must account for all the period of delay; the delay should not be inordinate; the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and If the Court feels that there are other sufficient reasons, such as the existence of a point of law of adequate importance such as the illegality of the decision sought to be challenged.

In this application, the applicant has two grounds for his application for an extension of time. The first ground is that the applicant was sick as a result, he failed to file the appeal within time; the second reason is the presence of illegality in the record of the trial DLHT.

It was the applicant's submission on the 1st reason for the application that he delayed filing the appeal within the time since he was sick. It was averred in paragraph four (4) of the affidavit that the applicant was ill from 27.02.2019 to 29.11.2021, and he was admitted for treatment at Benjamin

Mkapa Hospital. The applicant attached medical documents to prove that he was sick. The respondent stated in his response that the applicant was not sick, and there is no evidence to prove that applicant was admitted to the hospital from 27.02.2019 to 29.11.2021.

The settled principle of law is that sickness is a good ground for extension. The position stated in several cases including the case of **Kapapa Kumpindi vs. The Plant Manager Tanzania Breweries Ltd**, Civil Application No. 06 of 2010, Court of Appeal at Mwanza, (unreported), at page 4; **Fredrick Mdimu vs. Cultural Heritage Ltd**, Revision No. 19 of 2011, High Court Labour Division at Dar Es Salaam, (Unreported); and in **Frank Mngoma vs. Everina Yakobo**, Misc. Land Application No. 35 of 2019, High Court of Tanzania, at Tanga, (Unreported). Nevertheless, the said sickness must be explained and must be the actual reason which hindered the applicant from filing the intended appeal in this Court within time. In the case of **Shembilu Shefaya vs. Omari Ally [1992] TLR 245**, the Court of Appeal rejected an extension of time based on sickness because the applicant failed to explain the sickness thoroughly. The Court of Appeal was of the view that the application did not elaborate on the sickness.

In this case, the applicant said he was admitted to Benjamin Mkapa Hospital attending treatment from 27.02.2019 to 29.11.2021, and he attached medical documents to support his assertion. The respondent noted that this is not true as the applicant appeared before the District Commissioner on 28.10.2019, 07.07.2020 and 29.07.2020 to try to resolve the matter. I will not consider the respondent's submission because it is not part of his counter affidavit. The same was raised in his submission. I will consider the submission of facts stated in parties' affidavits.

The applicant's medical documents attached to the affidavit do not indicate that he was admitted to the hospital from 27.02.2019 to 29.11.2021, as it was asserted in his affidavit and submission. The Benjamin Mkapa Hospital clinic card displays that the applicant attended the clinic in urology on 27.02.2019, 27.05.2019, 12.06.2019, 08.01.2020, 17.08.2020, 21.09.2020 and 18.11. 2020. The applicant attended further clinics in urology on 03.05.2021, 07.05.2021, 09.06.2021, 08.09.2021, 11.10.2021 and 29.11.2021. The Discharge Summary of the Benjamin Mkapa Hospital shows that the applicant was admitted for only five days. He was admitted on 07.05.2021 and was discharged on 11.05.2021.

In addition, the trial Tribunal's record shows that the trial DLHT judgment was delivered on 28.06.2019 in the presence of both parties. The applicant filed in this Court the Misc. Land Application No. 5 of 2019 on 04.10.2021 seeking leave for an extension of time against the decision of the trial DLHT, but he withdrew it on 24.03.2020. This evidence contradicts the applicant's assertion in the affidavit that he was admitted to the hospital from 27.02.2019 to 29.11.2021. The evidence in the record shows that he was admitted to the hospital from 07.05.2021 to 11.05.2021. It means that the facts asserted by the applicant in the affidavit is not correct. The sickness did not stall the applicant from filing appeal within time as he alleges. Thus, there is no evidence in the record to prove that the sickness is the actual reason which stopped the applicant from filing his appeal to this Court, within time, against the decision of the trial DLHT.

On the issue of the presence of illegality on the face of the record of the trial DLHT, a point of illegality is sufficient ground for the Court to grant an application for an extension of time even where there is no reasonable explanation from the applicant. In the case of **VIP Engineering and Marketing Limited and Two Others vs. Citibank Tanzania Limited,**

Consolidated Civil Reference No.6, 7 and 8 of 2006, Court of Appeal of Tanzania at Dar Es Salaam, (unreported), it was held that, I quote:-

"It is settled law that a claim of the illegality of the challenged decision constitutes sufficient reason for the extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay."

The same position was reiterated in the case of **TanESCO vs. Mufungo Leonard Majura and 15 Others**, Civil Application No 94 of 2016, Court of Appeal of Tanzania at Dar es Salaam, (Unreported), where it was held that:

"Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, there is a complaint of illegality in the decision intended to be impugned suffices to move the Court to grant extension of times so that, the alleged illegality can be addressed by the Court."

The respective illegality has to be sufficient in content, apparent on the face of the record, and does not need to be discovered by a long drawn argument or process. This was stated in **Stephen B.K. Mhauka vs. The District Executive Director, Morogoro District Council and two**

Others, Civil Application No. 68 of 2019, Court of Appeal of Tanzania, at Dar es Salaam, (Unreported); and in the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, Court of Appeal of Tanzania, at Arusha, (Unreported).

The applicant did not mention the alleged point of illegality in the affidavit, but he mentioned it in his submission. The omission to mention the illegality in the affidavit has prejudiced the respondent's right to know the illegality and prepare his response. In his submission, the applicant said the illegality is that the trial Tribunal's proceedings reveals that only one assessor provided his opinion. The respondent replied on the issue of illegality that both two assessors provided their opinion during the trial.

I got an opportunity to peruse the record of the trial Tribunal. The record shows the trial in the DLHT commenced and was conducted in the presence of two assessors, namely Mgongolwa and Natalia Magoha Ngasenga. However, before the trial was concluded, one of the assessors, Natalia Magoha Ngasenga, died on 22.06.2018 and was buried on 23.06.2018. After that, the DLHT proceeded with the hearing of the case

with the remaining assessor to the end of the trial. The said assessor provided his opinion before the judgment was pronounced.

The Land Disputes Courts Act, Cap. 2016 R.E. 2002 provides in sections 23 (1), (2) and (3) that the District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment. The law provides further that if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence. As the record shows that one assessor died before the conclusion of the trial, the trial Chairman of the DLHT properly continued and concluded the proceedings with the remaining assessors. In such situation, I find that there is no illegality on the face of records of the trial Tribunals proceedings and judgment which need to be determined by this Court in the intended appeal. Thus, this reason also has no merits.

The applicant was supposed to account for each and every day delayed in the application for an extension of time. The duty was stated in several decisions of the Court of Appeal, including the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another**, Civil Application No. 278/15 of 2016, the Court of Appeal of Tanzania at Dar Es Salaam, (unreported); and the case of **Ramadhani J. Kihwani vs TAZARA**, Civil Application No. 401/18 of 2018, Court of Appeal of Tanzania at Dar Es Salaam, (Unreported). In the case of **Bushiri Hassan vs Latifa Lutiko Mashayo**, Civil Appeal No.3 of 2007 (unreported), the Court of Appeal held that:-

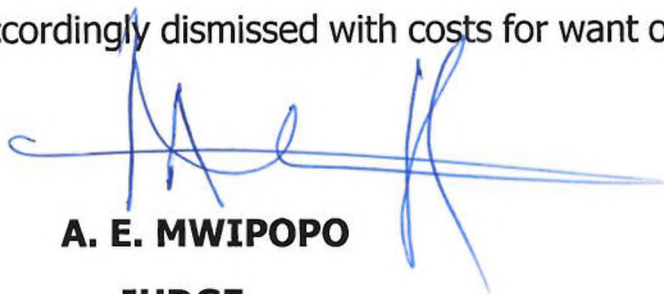
"Delay, of even a single day, has to be accounted for otherwise, there would be no proof of having rules prescribing periods within which certain steps have to be taken."

In the present application, there is no such explanation. The judgment of the trial DLHT was delivered on 28.06.2019, and he was supposed to file his appeal within 45 days from the decision date. This application for an extension of time was filed on 31.10.2022, which is almost 3 years from the date of judgment. The delay is inordinate and requires more sufficient reasons before the Court could grant the extension of time.

The evidence on record shows that applicant was admitted to the hospital from 07.05.2021 to 11.05.2021. By this time, the time to file the appeal has already expired for almost two years. Even if it is assumed that he was receiving treatment up to 29.11.2021, as he alleges contrary to the evidence in the record, it still took the applicant almost 11 months to file the present application. The applicant is supposed to account for each day of the delay. However, the same is lacking. The applicant appears to be negligent and not diligent in prosecuting his case. In the case of **Dr. Ally Shabhay vs. Tanga Bohora Jamaat [1997] TLR 305**, the Court held that:-

"Those who wish to come to the court of law must not show unnecessary delay in doing so, especially where a prescribed limitation period is provided by the law they must show due diligence."

Therefore, I find the applicant failed to provide good cause for the Court to extend the time to file an appeal against the decision of the trial DLHT. The application is accordingly dismissed with costs for want of merits. It is so ordered.

A handwritten signature in blue ink, appearing to read "A. E. Mwiipo", is written over the printed name.

A. E. MWIPOPO

JUDGE

02/06/2023