

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPLICATION NO.15 OF 2022

*(Originating from the District Land and Housing Tribunal for Mtwara at
Mtwara in Land Application No.110-2018)*

FADHILI MOHAMED HASSANI.....APPLICANT

VERSUS

ALLY DADY MAGOMA.....1ST RESPONDENT

NAMIC INVESTMENT COMPANY LIMITED.....2ND RESPONDENT

ASHA AHMAD MUSSA.....3RD RESPONDENT

RULING

27/06/2023

LALTAIKA, J.;

The applicant, **FADHILI MOHAMED HASSANI** is praying for court to grant him an extension of time to appeal to this court out of time. The applicant is moving this court under section 14(1) of the Law of Limitation Act [Cap. 89 R.E. 2019], section 41(2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] and any other enabling provision of the law. The application is supported by an affidavit affirmed by applicant. Needless to say, that the application has been objected only by a counter affidavit of

the first respondent which was accompanied by the notice of the Preliminary objection. However, on 21/02/2023 the first respondent dropped his preliminary objection the prayer which this court had granted.

When this matter was called on for hearing today the applicant appeared in person and unrepresented while on the side of the respondents only the first respondent appeared in person and unrepresented.

On the part of the applicant, at the outset submitted that the he pray for extension of time to file an appeal out of time. He went on and contended that soon after the judgement, he got a problem of mental sickness. He contended further that it is not that he is already healed, but he is under medication. The applicant submitted that it took long for him to come back to the present situation. He stressed that that is the main reason for his application.

In addition, the applicant contended that he needed to ensure that the matter is determined because in the District Land and Housing Tribunal decided on a completely different case. The applicant maintained that he complained against the current respondent. He insisted further that the judgement has totally different parties i.e. **Ally Dadi Magoma vs Omari** [applicant was not sure of the sir name]. The applicant submitted that he is the one who is sick and the case is on him.

In reply, the first respondent contended that the reason the applicant has advanced that he was sick is not tenable. He contended further that as to whether the applicant was sick or the whole family.

Having gone through the application by the applicant and submission of the first respondent, I am inclined to decide on the merit or otherwise of the application. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse. Moreover, extension of time may only be granted where it has been sufficiently established that the delay was justified with sufficient/good cause.

In the instant application the reasons for the delay by the applicant is featured under paragraphs 6, 7, 8, 9, 10, 11 and 12 of the affirmed affidavit of the applicant. The main reasons grasped from those paragraphs and in oral submission are **one**, sickness and attendance of psychiatric clinic at Ligula Referral Hospital and in Dar es Salaam. **Two**, while attending treatment in Dar es Salaam the applicant got an accident. **Three**, there is overwhelming chance of success. **Four**, presence of illegality on the decision of the Tribunal.

In view of the above reasons, it is apparent that the delay was caused by factors beyond the ability of the applicant to control and cannot be blamed on him. In addition, the applicant has averred that the impugned ruling of the District Land and Housing Tribunal is tainted with illegality. The applicant has shown the illegality which he asserts that the learned Chairman dismissed the matter on the ground of being res judicata to Land Case No.0014 of 2016 which originated from Mtonya Ward Tribunal. The applicant stressed that the parties of the said case are different from the parties in Land Case No.110 of 2018.

The next issue I am called upon to resolve is whether or not the reasons advanced by the applicant amount to good cause. Our law does not define what amount to good/sufficient cause. However, in the case of **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007 (unreported) it was held:-

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."

As to the matter at hand, I can safely say that, the applicant has advanced good cause for his delay to lodge his Petition of Appeal out of time. Indeed, the chain of events explained in the applicant's affidavit and also in his oral submission shows that in spite of inability to follow up on his case due to the circumstances beyond his control because of long mental sickness and medication plus an accident. This reason has been shown by "annexure 2 collectively".

I am convinced that the applicant has not only advanced good cause but also exhibited great diligence in pursuing his appeal. He has not displayed any apathy, negligence or sloppiness in the prosecution he intends to take. See, **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania** Civil Application No 2 of 2020 [2011] TZCA4.

In addition, the assertion that the intended impugned decision is tainted with illegality; this is a point of law which I find it is important to be

challenged at this court. Furthermore, it is a trite law that whenever an application asserts that there is an issue of illegality in the impugned judgement alone is a good and sufficient ground for granting him an extension of time to appeal to the higher court. See, **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] T.L.R. 185 and **Lyamuya Construction Co. Ltd. vs. Board of Registered Trustees of Young Women Christian Association of Tanzania** (supra).

For the foregoing reasons, I find and hold that the applicant has advanced sufficient reasons for the delay to warrant this court to exercise its discretion to grant the enlargement sought. Therefore, the applicant is hereby given thirty (30) days to lodge his Petition of Appeal effective from the date of this ruling.

It is so ordered.



Court


E.I. LALTAIKA
JUDGE
27.6.2023

This ruling is delivered under my hand and the seal of this court on this 27th day of June 2023 in the presence of the applicant and the respondent, both appearing in person and unrepresented.




E.I. LALTAIKA
JUDGE
27.6.2023