

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 26 OF 2022

*(Originated from Misc. Land Appeal No. 2 of 2021 High Court of Tanzania at Sumbawanga,
Land Appeal No. 27 of 2019 at the District Land and Housing Tribunal for Mpanda at Katavi
and Land Case No. 10 of 2019 Inyonga Ward Tribunal)*

AUGUSTINO ^{s/o} MBALAMWEZIAPPLICANT

VERSUS

JUSTIN ^{s/o} ABEL MSUNUKARESPONDENT

RULING

12th July & 21st August, 2023

MRISHA, J.

In this application, **Augustino ^{s/o} Mbalamwezi** (the applicant), is seeking an order for a grant of extension of time to file a notice of appeal out of time in order to lodge his appeal against the decision of the High Court of Tanzania (Sumbawanga District Registry) at Sumbawanga in Misc. Land Appeal No. 2 of 2023, as well as certificate on a point of law in respect of decision of the High

Court of Tanzania, (Sumbawanga District Registry) at Sumbawanga in Misc. Land Appeal No. 2 of 2023.

As a matter of procedure, the instant application was filed by way of a Chamber summons under the provisions of section 5(2)(c) and section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 (the AJA), supported by an affidavit duly sworn by the applicant.

On the other hand, the respondent, **Justin s/o Abel Msunuka** neither lodged a counter affidavit resisting the application nor did he appear in court to resist the application; hence the application was heard ex parte under Order XXXIX, Rule 17(2) of the Civil Procedure Code, CAP 33 R.E. 2019 (the CPC).

The facts of the matter leading to the above prayers, can be summarized as follows: -

The applicant preferred an appeal to the High Court of Tanzania, (Sumbawanga District Registry) at Sumbawanga in Misc. Land Appeal No. 2 of 2021 before Hon, Nkwabi, J. following the decision of the District Land and Housing Tribunal for Mpanda at Katavi (the appellate tribunal) in Land Appeal Case No. 27 of 2020 which originated from the decision of Inyonga Ward Tribunal (the trial tribunal) in Land Case No. 10 of 2019.

At the trial tribunal, the matter was decided in favour of the respondent. The applicant was dissatisfied by the decision of the said tribunal and thereafter lodged an appeal before the appellate tribunal which then upheld the decision of the trial tribunal, dismissed the appeal and condemned the applicant to pay costs.

Dissatisfied by the decision of the appellate tribunal, the applicant filed an appeal before this court vide Misc. Land Appeal No. 2 of 2021 which was heard before Nkwabi, J., seeking to challenge the decision of the appellate tribunal and on the other side, the respondent filed his reply against the appellant's petition of appeal.

Despite several efforts to make him appear in court and prosecute his case including a substituted service by way of publication through a well circulated Mwananchi Newspaper, the respondent did not appear, as such the said appeal was heard ex parte. As a result, the learned High Court Judge dismissed the appeal on the ground that the applicant cannot allege ownership of land through his father and then come to defend it by adverse possession.

In that case it was further stated that the adverse possession entails unlawful occupation of the land only to be justified by a long and undisturbed occupation

of the said land; relying on the case of **Hon. Attorney General v Mwahenzi Mohamed** (as administrator of Estate of Late Dolly Maria Eustace) & **3 others**, Civil Application No. 314/12 of 2020, CAT Tanga (unreported). Finally, costs were waived due to none appearance of respondent in the hearing of that appeal case.

Discontented by the above court's decision, the applicant lodged a Misc. Land Application No. 26 of 2022 seeking extension of time to file a notice of appeal out of time and certificate on a point of law against the decision of the High Court.

During the hearing of this application, the applicant was not represented; same applies to the respondent who was neither present in court nor did he file a counter affidavit resisting the instant application. Being a lay man, the applicant prayed to this court to adopt his affidavit so as to form part of his submission and prayed that his application be granted.

Having gone through the above submission, I am of the view that the sole issue for my determination is whether the applicant has assigned sufficient reasons for his application to be granted.

I will begin by looking on the application filed by the applicant in this court to ascertain whether the applicant has furnished good cause to warrant an extension of time. In his sworn affidavit, the applicant furnished reasons for extension of time at paragraphs 4, 5, 6, 7 and 8 of the affidavits; he also annexed a letter from Mlele Municipal Council captioned with the subject "*Medical Report of Augustine Mbalamwezi*" which provides for a medical history of the patient; the history can be reproduced partly as here under: -

"REF: MEDICAL REPORT OF AUSTINE MBALAMWEZI.

Client named above with hospital registration number 1018167-00-10-40/2018, visited at our facility on 14th July, 2022 with complaint of difficulty in breathing for 5 days and inability to pass urine for 1 day (urine retention). Difficulty in breathing was of gradual onset, no periodicity, no aggravating, or relieving factors, this symptom was associated with chest tightness, productive cough, on and off fever, generalized body malaise and passage of flue like...After recovery client was referred to BMC for further investigations and management of prostate. At Bugando he was diagnosed with prostate enlargement and he underwent TURP (Transurethral resection of the prostate).

On 04th September, 2022 he was discharged from hospital and scheduled to attend urology clinic."

The Judgment of Misc. Land Appeal No. 2 of 2021 was delivered on 11th day of July, 2022 and the applicant started to become sick on 14th day of July, 2022 and underwent some treatments as indicated in the letter above quoted. After recovery he was referred to Bugando for further investigation and management of prostate. On 4th day of September, 2022, the applicant was discharged from hospital; thus, he filed this application on 21st October, 2022.

There is a plethora of case laws that in an application for extension of time as the instant one, an applicant is required to account for each delay. See the case of **Lyamuya Construction Company Ltd v Board of Trustees of Young Women Christian Association of Tanzania**, Civil Appeal No. 2 of 2000, **Zawadi Msemakweli v NMB PLC**, Civil Application and **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (both unreported).

In the latter case the Court of Appeal held inter alia that:

"... the 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 case of **Laurent Simon Assenga v Joseph Magoso and 2 others**, Civil Application No. 50 of 2016 (*Tanzlii*), it was held that:

"What is a good cause is a question of fact depending on the facts of each case and for that reason, many and varied circumstances could constitute good cause in any particular case".

From the above quotation and well-established principle of law regarding an application for extension of time, it is a requirement of the law that the applicant in that respect must show a good reason for the delay and must account for each day of the delay.

Where it is proved on the balance of probabilities, sickness has been good and sufficient ground for extension of time. However, in the present application it appears that the applicant was discharged from hospital on 04th day of September, 2022 and decided to lodge this application on 21st October, 2022 which is about 46 days after he was discharged from hospital. The applicant did not account for day of every single day of 46 days during which he was not sick, and there is nothing in his affidavit demonstrating his account for that delay.

That apart, it is apparent that the present application was made under sections 5(2)(c) and 11(1) of the AJA with the applicant's prayer that this court be pleased to extend the time to file a notice of appeal out of time and an application for certificate on a point of law to the Court of Appeal of Tanzania. From the above, it is glaring that the instant application contain two basic prayers; one for extension of time to file a notice of appeal and two, certificate on point of law.

Under the relevant provisions of the law, an application for extension of time and an application for certificate on a point of law are made differently. The former is made under Section 11(1) while the latter is made under section 5(2)(c) of the AJA. Since in the present application, there are two applications derived from different provisions of the law, it is certain that the two cannot be lumped up together in one application as it happened in this application.

Moreover, as it was held in the number of cases of **Mohamed Salimin v Jumanne Omary Mapesa**, Civil Application No. 103 of 2014, **Rutagatina C.L. v The Advocate Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010 and **Ally Ally Mbegu Msilu v Juma Pazi Koba (Administrator for the Deceased Estate of the late Hadija Mbegu Msilu)**, Civil Application No. 316/01 of 2021, in this case the Court of Appeal held that:

"In view of the above circumstances, the two applications ought to have been filed separately instead of lumping them together which make it an omnibus application."

As it is, this application is omnibus for combating two unrelated applications. In totality of the foregoing, I am satisfied that the AJA does not provide for an omnibus application.

It is due to the above reasons that I find the present application unmerited, and I accordingly dismiss it with no order as to costs because the respondent was not present in court.


A.A. MRISHA
JUDGE
21.08.2023

DATED at SUMBAWANGA this 21st day of August, 2023.




A.A. MRISHA
JUDGE
21.08.2023