

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA SUB-REGISTRY

(LAND DIVISION)

AT SONGEA

MISC. LAND CASE APPLICATION NO. 09 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Songea at Songea in Land Application No. 53 of 2022)

CHRISTOPHA MARTIN KOMBA APPLICANT

VERSUS

MARIETHA AUGEN NDUMBA RESPONDENT

RULING

Date of last Order: 30/08/2023

Date of Ruling: 18/09/2023

U.E. Madeha, J.

The Applicant, Christopha Martin Komba filed this application seeking for extension of time within which he can file an appeal out of time to challenge the decision of the District Land and Housing Tribunal for Songea in Land Application No. 53 of 2022. The Applicant has moved this Court by way of chamber summons made under section 41 (2) of the *Land Disputes Court Act (Cap. 216, R. E. 2019)*. The application is supported by affidavit sworn by the Applicant setting out the reasons for the enlargement of time.

From the affidavit sworn in support of this application, there are two major reasons which has moved the Applicant to file this application. The **first** reason advanced by the Applicant is that he was nursing his brother who died later while getting medical treatment at Peramiho hospital. In the **second** reason, the Applicant has averred that he encountered financial difficulties since he spent all his money in nursing his brother who died later.

The Respondent filed her counter affidavit resisting the application. The Respondent asserted that the Applicant filed Land Application No. 53 of 2022 while his brother was already in hospital, thus he cannot allege that he failed to file an appeal on time for that reason while the case was heard when he was nursing her late brother. She deponed further that the Applicant's late brother was taken care by family of the Applicants brother and not by the Applicant. The Respondent deponed further that the costs which were used in nursing the Applicant's brother were from the family of the Applicant and not from the Applicant. The Respondent deponed further that the Applicant's brother died in January, 2023 while the impugned decision was delivered on February, 2023 and the Applicant's claims that he was nursing his late brother is unfounded.

In this application both parties had no representation, they appeared in person and by consent of both parties this application was disposed by way of written submission. The parties adhered to the orders of this Court and they filed their written submissions on time which enabled this Court to compose this ruling.

In his submission in support of the application, the Applicant argued that the delay in filing the appeal was due to the fact that he was nursing his late brother at Peramiho hospital and he died on 11th January, 2023 while he was still at hospital. A certificate of death was attached to prove the same. He submitted further that the impugned decision was delivered on 13th February, 2023. The Applicant averred further that after the death of his brother he suffered financial crisis since his brother left seven children and a lot of money was used in nursing his late brother.

On the contrary, the Respondent while opposing the application submitted that for application of this nature to succeed, the Applicant has to advance sufficient cause which prevented him from filing the appeal on time. On the Applicant's first reason for delay that he was nursing his late brother at Peramiho hospital is unfounded since the Applicant's brother died on 11th January, 2023 while the impugned decision was delivered on

13th February, 2023, more than a month later. The Respondent submitted further that the Applicant has stated that he incurred financial incapacity but that has never been a sufficient reason for extension of time.

In his rejoinder submission, the Applicant insisted that the delay was caused by nursing his late brother and after the death of his brother he was taking care of the seven children left by his late brother. He added that looking at the proceedings of the trial Tribunal the evidence given by the Applicant was not considered in composing the judgment and the trial Tribunal based on the weak evidence given by the Respondent and that, is a sufficient reason for enlargement of time.

As much as I am concerned, having gone through the affidavit, the counter affidavit and the submissions made by the parties in this application, I find the main issue which needs to be determined by this Court is whether the Applicant has advanced good cause to convince this Court to exercise its discretion power to extent time within which the Applicant can lodge an appeal out of time.

It is the established practice of this Court and the Court of Appeal which is the Appex Court in our jurisdiction that, for applications of this nature to succeed the Applicant has to elaborate clearly the reasons for the

delay to enable the Court to use its discretion which is to be exercised judiciously. In **Robert Madololyo v. Republic**, Criminal Appeal No. 486 of 2015 [2018] TZCA 346 [14 February 2018; TanzLII], the Court of Appeal of Tanzania, quoting with approval the decision of the Supreme Court of Appeal of South Africa in **Uitenhage Transitional Local Council v. South African Revenue Service**, 2004 (1) SA 292 (SCA), cautioned that, condonation for delay the Applicant must furnish a detailed and accurate explanation of the causes of the delay to enable the Court to understand the situation and assess the responsibility. Also, in the case of **Republic v. Yona Kakonda & 9 Others** (1985) T. L. R 84, it was held that:

"In deciding whether or not to allow an application to appeal out of time, the Court has to consider whether there are sufficient reasons not only for the delay but also sufficient reasons for extending time during which to entertain the appeal."

In the present application, the first reason advanced by the Applicant is to the effect that he was nursing his late father. From the competing arguments made by both parties it is undisputed fact that the Applicant's brother was admitted at Peramiho hospital where he met his death on 11th January, 2023. The judgment which the Applicant has sought for extension

of time so that he can file an appeal out of time was delivered on 13th February, 2023, more that a month later. This reason has been critically challenged by the Respondent on the ground that the impugned judgment was delivered more than a month later from the date of death of the Applicant's brother. On my side, taking into consideration that the Applicant's brother died on 11th January, 2023 as revealed in the Certificate of Death which the Applicant attached in his written submission, I find such argument cannot convince this Court to extend the time within which the Applicant can file an appeal out of time to challenge the decision which was delivered on 13th February, 2023. I find that the Applicant has failed to give reasonable explanation on the first reason.

The second reason which moved the Applicant to file this application is on financial constrains which he encountered after the death of his beloved brother. He argued that his late brother was nursed at Peramiho hospital for a time before he met his death and a lot of money was spent. The Respondent while opposing the Applicant's submissions he stated that the money which was used in nursing the Applicant was from the members of the family and not from the Applicant. The Respondent stated further that financial difficulties has never been a good cause for the Court to

grant an application for extension of time. From the submissions made by both parties, I partly agree with the Respondent that financial difficulties or poverty has never been a good cause for extension of time. But it is important to note that in exceptional circumstances, the Court may accept it as a good cause for extension of time. See the case of **Hamisi Mponda v. Nico Insurance Tanzania Limited & 2 Others**, Civil Application No. 254/01 of 2021 (20th August, 2023 TanzLII, Court of Appeal of Tanzania).

Also, in the case of **Constantine Victor John v. Muhimbili National Hospital**, Civil Application No. 214/18 of 2020, the Court of Appeal stated that:

"... financial constraints may not be a sufficient ground for extension of time, however, ... there are exceptional circumstances when it can be sufficient."

In the circumstance of this application, I find the Applicant has failed to make an accurate explanation on how he was financially incapacitated. There is no exceptional circumstance to enable this Court to grant the extension of time.

From the foregoing discussion, I find the Applicant has failed to advance good reason to enable this Court to exercise its discretion power

to grant extension of time for the Applicant to file an appeal out of time.
The application is dismissed and the Applicant is ordered to pay the costs
for this application. It is so ordered.

DATED and DELIVERED at **SONGEA** this 18th day of September, 2023.




U. E. MADEHA

JUDGE

18/09/2023

COURT: Ruling is read over in the presence of the Applicant and the
Respondent. Right of appeal is explained.




U. E. MADEHA

JUDGE

18/09/2023