

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA

MISCELLANEOUS LAND APPLICATION NO. 48 OF 2022

(Arising from Land Appeal No. 91 of 2019 of the High Court of Tanzania, Dodoma.)

OMARY MAULID MJIE.....APPLICANT

Versus

SHABAN HAMISIRESPONDENT

RULING

Date of Last Order: 22nd August 2023.

Date of Ruling: 15th September 2023.

MASABO, J:-

By a chamber summons filed under section 11(1) of the Appellate Jurisdiction Act, Cap. 141R.E 2019, leave for extension of time is sought to enable the applicant to file an application for leave to the Court of Appeal against the decision of this court in Land Appeal No. 91 of 2019. Supporting the application is an affidavit sworn by the applicant Omary Maulid Mjie. In the affidavit, it is deponed that the applicant was the appellant in Land Appeal No. 91 of 2019 before this court which ended in 25th September in his disfavour. Disgruntled by the judgment, he wants to appeal to the Court of Appeal but the time within which to file the leave to appeal lapsed when he was nursing himself of an ailment. Hence, this application. The application was contested by the respondent.

Hearing of appeal proceeded by way of written submissions. The applicant was ordered to file his submission in chief on or before 25th July 2023. The respondent was to file his reply by 9th August 2023 and a rejoinder if

any was to be filed on 16th August 2023. The parties complied with the scheduling order. Both parties don't have legal representation.

The applicant submitted that, having been aggrieved by the decision of this court in Land Appeal No. 91 of 2019 which was delivered on 25th September 2020, he started to prepare an application for leave to appeal to the Court of Appeal but he fell sick that is why he did not file his application on time. He attached medical certificate in support of his assertion. He also stated that as he lives in Singida which is geographically far from Dodoma where this court is located, it was not possible for him to file his application on time as the movement from Singida to Dodoma could have brought more problem to his health. He added that, sickness is a sufficient ground upon which the court can extend time to allow the applicant to file his application out of time. On this, he cited the case of **Director Ruhonge vs. January Lichinga**, Civil Application No. 02 of 2006, Court of Appeal (unreported).

In reply, the respondent stated that extension of time is not an automatic right. As a general rule it is within the discretion of the court to grant extension of time and that discretion is judicial meaning that it is exercisable according to the rules of reason and justice (see the case of **Lyamuya Construction Company Ltd vs. The Board of Registered Trustee of Young Womens Christian Association of Tanzania**, Civil Application No. 2 of 2010[2011] TZCA 4 TANZLII. He proceeded that, through this authority, the Court of Appeal provided factors to be considered when granting or denying to grant extension of time, namely:- that 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 illegality of the decision sought to be challenged. None of these have been met in the present case. The sole reason advanced by the applicant in support of his application is that he was ill. Much as illness is one of the grounds for extension of time, he argued, for extension to be granted on the basis of illness the circumstances of the illness must be carefully considered. In the present case, the evidence in support to the alleged sickness is a sick sheet showing that the applicant was sick on 20th October 2020 where he attended at hospital as an outpatient. There is no record that he was admitted in hospital for treatment. The additional evidence available shows that he went back for treatment as an outpatient on 25th October 2020.

It was the respondent's further observation that, the medical chits are devoid of any weight as they do not reveal where he was treated because it does not have a hospital seal. In the alternative, it was argued that even if the medical chit were to be considered valid and relevant they should not be relied upon as they show that the last time the appellant attended hospital was on 25th October 2020 whereas the judgment he intends to challenge was delivered on 25th September 2020 and the present application was filed on 10th June 2022 which shows that the applicant has not fully accounted for each and every day of delay contrary to the requirement of the law. He concluded that, failure to account for each day of delay even for a single day is a fatal omission. Therefore, the

application should be dismissed with costs. This marked the end of the submissions as the applicant did not file his rejoinder.

I have dispassionately considered the above submissions alongside the affidavit bracing the chamber summons, its supporting documents and the respondent's counter affidavit. It is a settled law that, in applications for leave for extension of time such as the one at hand, the court will invariably invoke its discretionary powers. Such powers being judicial must be judiciously exercised upon a good cause for delay being demonstrated (see **Finca (T) Ltd & Another vs. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, CAT (unreported)). In essence, there are no hard and fast rules as to what amounts to a good cause. A good cause is dependent upon the facts of each particular case and the test applicable is as stated in the case of **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2017(CAT-unreported) where the Court of Appeal stated that:

The test for determining an application for extension of time is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted.

In the case of **Tanga Cement Company Ltd vs. Jumanne D. Masangwa and Amos. Mwalwanda**, Civil Application No. 6 of 2001 [2004] TZCA 4, TANZLII the Court of Appeal while dealing with an application for extension of time held that:-

It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion however has to be exercised judicially, and the overriding consideration is

that there must be sufficient cause for doing so. What amounts to sufficient cause has not been defined. From the decided cases a number of factors have to be taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant.

Articulating this principle further in **Lyamuya Construction Company Ltd Versus Board of Registered Trustee of Young Women's Christian Association of Tanzania** (supra) and **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT (unreported), the Court of Appeal held that a good cause is established by looking at such factors as the duration of delay that is, whether the delay is not inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged.

Starting with the duration of delay, the decision sought to be challenged if the present application sails was delivered by this court on 25th September 2020. As per rule 45(a) of the Court of Appeal Rules, 2009, the application for leave to appeal to the Court of Appeal ought to have been filed within thirty days from this date. Thus, it was to be filed by 25th October 2020. As the present application was filed on 10th June 2022 which is approximately one year seven months and sixteen days after the impugned decision, it is obvious that the delay is inordinate and inexcusable unless it is fully accounted for.

The immediate question, therefore, is whether the applicant has accounted for delay. As correctly observed by the respondent, the sole reason advanced in support of the application is the applicant's sickness as deposed under paragraphs 4 of his application. Indeed, sickness is a good ground for extension of time as it is now a settled law that once sickness is established and proved as to justify the delay, it constitutes sufficient cause for extension of time. This was stated by the Court of Appeal in **Tiluhuma Pima vs. Malagoi Muhoyi**, Civil Application No. 418/08 of 2022[2022] TZCA 807 [Tanzlii] where it held that:-

On the second ground which is about 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.

I need not emphasize that as per this authority, for sickness to suffice as a good cause it must be established. It is not sufficient to just state that sickness prevented the applicant from taking the necessary legal step. Proof must be rendered to show that he was indeed sick and that the sickness prevented him from filing the application. Going back to the affidavit and the submission, the applicant has stated to have been treated at hospital on 20th October 2020 and 25th October 2020 as an outpatient at Ihamba Health Center at Singida. However, as correctly observed by the respondent, he lodged the present application on 10th June 2022 after a year and seven months has lapsed from the impugned judgment's date that is on 25th October 2020. Contrary to the requirement of the law, he has rendered no explanation as to what befell him between 25th October 2020 when he last attended at hospital and 10th Jun 2022 when he lodged the present application. The omission is indeed fatal and

contrary to the trite law that the applicant seeking for extension of time must fully account for each day of delay even if it is just for a single day as held in **Bushiri Hassan vs. Latifa Lukiko Mashayo**, Civil Application No. 03 of 2007 (unreported) where the Court of Appeal emphasized that:-

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

On the strength of the above and subsequent authorities on the requirement to show a good cause and to fully account for each day of delay even if it was just for a single day, the applicant's miserable failure to fully account for delay has rendered the present application a good candidate for dismissal for want of merit.

Further, to the above, in my perusal of the record while composing this ruling, I have observed that there is an order of this court in Miscellaneous Land Application No. 90 of 2020 which was between the parties herein showing that the applicant has previously filed an application for leave. The same was filed on 4th September 2020 and was seeking for leave to appeal to the Court of Appeal against the decision which is a subject of the present application. The application was dismissed on 12th May, 2022 after it was established that it was time barred which means that, the present application is an attempt to resurrect an application which has been dismissed, a practice not permitted by law. Hence, the present application is incompetent. Much as I am aware of the requirement to give the parties an opportunity to be heard on a new issue raised suo

moto by court, in the view of my finding above, I see no need as whatever transpires will not render the application meritorious.

Accordingly, the application fails for want of a good cause and it is consequently dismissed with costs.

DATED at DODOMA this 15th day of September, 2023.



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

J.L. MASABO
JUDGE