

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY
AT SHINYANGA

MISC. LAND APPLICATION NO.24 OF 2023

(Arising from High Court Shinyanga Land Appeal No.24 of 2021, the same arising from Land Appeal No.39 of 2020 before Maswa District Land and Housing Tribunal, the same arise from Land Application No.1 of 2019 Malambo ward Tribunal)

LUCIA NTEMIAPPLICANT

VERSUS

LIMI MAYIGERESPONDENT

RULING

19th March & 5th April 2024

MASSAM, J.:

The applicant herein sought for extension of time to file application for certification of point of law before this Court. In mid time the applicant had unsuccessfully appealed before the DLHT and before this Court. She failed to be heard as for time frame for her to file application for certification of point of law hence this application for extension of time. The applicant's application is supported by an affidavit sworn by Lucia Ntemi, the applicant. The application was not opposed by the respondent as he refused to appear to the court regardless many summonses which served to her to appear or to file counter affidavit.

Briefly, it goes thus, applicants successfully filed a case before Malambo ward tribunal in respect of the land which located at Ngashada street Bariadi District at Simiyu region. Respondent was aggrieved with the said decision and appealed to the District Land and Housing Tribunal for Maswa at Maswa via land appeal no 39 of 2020 where he lost her case again and successful appeal to the high court via land appeal No.24 of 2021. Applicant aggrieved by the said decision and intended to file application for certification on point of law for him to appeal to the court of appeal but she was out of time so she filed this application.

During the hearing of this application, the applicant appeared in person unpresented and the respondent was not present despite of service of this court and thus the matter proceeded against her. Arguing for the application, the applicant prayed for her affidavit to be adopted and form part of her submission. She also added that her mother was sick and still sick. Again, she said that her mother has been using the disputed land since 1974. Also, she said that she filed this application on time but there were some documents missing which made her to be late. Lastly she said that she was not happy with the decision reached by this Court hence intend to appeal to Court of Appeal of Tanzania.

I have thoroughly scanned chamber summons, affidavit and submission of the applicant and the issue for consideration is **whether this application has been brought with sufficient cause.**

This being application for extension of time, the law is settled that applicant has to show sufficient cause or good cause for delay as it was held in the case of **Regional Manager, Tanroads Kagera r. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007, CAT** (unreported) and **Benedict Mumello v. Bank of Tanzania [2006] E.A 227** and that applicant is required to account for each day of delay and give sufficient reason for that delay.

There is a litany of cases to that effect. In the case of **Attorney General v. Mkongo Building and Civil Works and another, Civil application No, 266/16 of 2019**, the Court of Appeal formulated guidelines that may be considered in application for extension of time like the one at my hand. Criteria to be considered in application for extension of time as formulated by the Court of Appeal in **Mkongo Building case, supra**, are that:

"(a) the applicant must account for all the period of delay;

(b) the delay should not be inordinate;

(c) the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and (d) if the court feels that there are other sufficient reasons, such as the existence of a point of law sufficient importance; such as the illegality of the decision sought to be challenged."

In the affidavit, the applicant deposed none of any reasons hindered her to file application for certification within the prescribed time, instead she has narrated the chain of suits which she was defeated and argued that she is unhappy with those decisions. She has not accounted for her delay anyhow.

The impugned decision of this Court in Land Appeal No.24 of 2021 before My brethren Matuma J, was delivered on 14th March 2022, the applicant filed application for certification of point of law before this Court out of time and the same was struck out on 12/12/2022. She then relaxed until on 16/5/2023, almost five months later from the decision of this court which struck the application of certification of point of law via Misc. Land Application No.15 2022. In nutshell the five months ought to be accounted for. Nevertheless, counting from the delivery of the impugned decision of this court which intend to be appealed delivered on 14th March 2022, the application for extension was filed on

16/5/2023, almost 14 months passed and the applicant has failed to substantiate it, this alone defeats her argument on the cause of delay. In her submission she started that her mother was sick the law is clear that sickness is a condition which is experienced by the person who is sick see the case of **John David Kashekya vs Attorney General** civil application no 1 of 2012 however for sickness to be sufficient reason the same must be proved, in our case the applicant alleged that her mother was sick that's why she delayed but she failed to bring any evidence to prove the same.

In the light of the above and in relation to the case at hand, it is clear that the applicant has failed to count for it for her to establish sufficient cause.

For the foregoing, I find that the applicant has failed to provide sufficient cause of delay and further has failed to account for each day of delay. I therefore dismiss the application with costs for want of merit.

It is so ordered.




R.B. Massam

JUDGE

05/04/2024