

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

MISC. LAND APPLICATION NO. 63 OF 2022

*(Originating from Land Appeal No. 62 of 2020 of District Land and
Housing Tribunal for Kondoa which comes from Land Application
No. 60 of 2020 before Songolo ward tribunal)*

HALFA RAMADHANI NDWATA APPLICANT

VERSUS

ATHUMANI NKUNDULORESPONDENT

RULING

21.05.2024

HASSAN, J.:

This application was brought by the applicant, one Halfa Ramadhani Ndwata under section 38 (1) of the Land Disputes Court Act, [Cap. 216 R. E. 2019]. The applicant herein seeks for an extension of time to lodge an appeal out of time against the decision of the District Land and Housing Tribunal of Kondoa from the Land Appeal No. 62 of 2020. The application is preceded by an affidavit sworn in by the applicant himself and further

detailed through written submission. In the affidavit, the applicant has reasoned in support of the application that, the applicant delay to lodge an appeal on time was due to sickness. He fortified that after the decision of the tribunal, he felt sick and that he was hospitalised at Mirembe Hospital. And that, by the time he was discharged, he had medical prescription that, he should proceed with treatment as an outpatient for seven months consecutively. And further, he was instructed not to engage himself in any heavy duties for seven months. Thus, because of that, he could not do anything with his appeal. Attached therewith, to back his submission, is a hospital discharge certificate. In furtherance, the applicant referred the decision in **Alhaji Abdallah Tajiri v. Eshakwendato Kiwelu Mushi** [1990] TLR 108, where it was held that:

"Sickness is sufficient reason to move the court to exercise its judicial discretion in order to extend the time limited by the statute."

Seeing on the other side, the application was contested by the respondent. In his counter affidavit, the respondent disputed paragraph three of the affidavit, and on that, he averred that the applicant has never been admitted at Mirembe national hospital as he alleged. The respondent

avowed that, during that time, the applicant was at Songolo village proceeding with his daily life. More so, at paragraph 4, the respondent further contested the hospital discharge certificate by saying that, the said certificate does neither have a doctor's signature nor hospital seal thus, it lacks authenticity.

Notably, apart from his counter affidavit, the respondent had also filed a submission in reply to back and reiterate his evidence to crush the applicant's assertion. In brief, his submission touches on the discrepancy of dates, from when judgment was pronounced to the date the applicant was admitted at hospital. To bolster his submission, the respondent cited decision in the case of **Esther Manonga v. Esther Lohay**, Misc. Civil Application No. 74 of 2022 HC (unreported). Adding to that, he insisted that there is no evidence showing that after discharge from hospital, the applicant was still on bed rest. And, that is why there is no any other medical chit to extend his medical attention.

A short story leading to the matter before this court is that, the applicant herein had initially raised his claim before the ward tribunal of Songolo in the Land Case No. 6 of 2020. After judgment was pronounced, the applicant emerged victorious. Dissatisfied, the respondent herein

appealed to the District Land and Housing Tribunal of Kondoa in the Land Appeal No. 62 of 2020. Days are not always the same, here the decision went to the respondent's favour. Though he was aggrieved by the decision, for the reasons best known to himself, the applicant remained mute for the days and weeks passed. Now before this court, the applicant seeks enlargement of time to lodge his appeal.

Therefore, at this juncture, what is for determination of the court, is whether the applicant in this application has advanced good cause for the court to grant the extension of time sought. The present application is predicated under section 38 (1) of the Land Disputes Courts Act, the section provides that:

38. Appeals of matters originating from Ward Tribunal -

(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:

*Provided that, **the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.***

Reading from the dictum under proviso, it is crystal clear that, with the use of the term "may", the court has been conferred with discretion to either grant or deny the extension of time sought. Notably, the discretion of the court has, however to be exercised judiciously. Though the difficulty is, so far, there is no exact definition of what amounts to good cause. But over time, the court of appeal has come up with guideline that could assist in measuring what amount to "good cause". For instance, in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christians Association of Tanzania**, Civil Appeal No. 2 of 2010 (unreported). In this case some of the guideline's set were:

- a) The applicant must count for all days of the 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.

d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

That being the yard sticks, I will apply the same guidelines to the application at hand where the applicant is applying for enlargement of time to file an appeal to the high court out of time. Henceforth, to appreciate what the applicant has transpired at paragraphs 3 and 4 of his affidavits, that the delay was due to the sickness. Thus, for clarity, firstly I will let the paragraphs speak for itself:

3. That, after the said decision of the tribunal, I felt sick and I was hospitalised at Mirembe Hospital. And when I was discharged, I was given prescriptions that I should proceed with treatment as an outpatient for seven months consecutively, and, I was instructed not to engage in heavy duties for seven months. As such I could not do

anything relating to the appeal. Leave is craved to refer to annexure "A2" as part thereof [sic].

Thus, *annexure "A2"* is a copy of the hospital prescription. And in paragraph 4, the affidavit provides:

4. that, having recuperated from the sickness the time to appeal has lapsed and I decided to apply for extension of time within which to appeal, hence this application...."

Going through the applicant's cerebral, the only annexure justifying his cause of delay is a hospital discharge certificate of which, it is vehemently disputed by the respondent for being ersatz. The respondent's claim is that the said certificate does neither have a doctor signature nor hospital seal to confirm its genuineness. Thus, in my observation on the face of it, the claim is apparent. Adding to that, having offered a critical reflexion on the said medical chit, it shows that the applicant was admitted at Mirembe Hospital on 25/08/2021, and he was discharged on 13/12/2021 whereas, its additional prescription was that, his fitness for duty is under supervisory and he ought to report for checking monthly. Now, moving from here, I am also mindful that, the impugned judgment was delivered on 11/08/2021, which

is fourteen days (14) after the date the applicant was admitted at Mirembe Hospital on 25/08/2021.

In my considered view, I am certain that claim of sickness can be justifiable for enlargement of time by the court if at all, the same is backed by medical kit (s) showing the dates of which imitates to the dates of delay disputed. Now, in this matter, since there were 14 days gap from the date of judgment to the date of admission at Mirembe Hospital, it is obvious that, an instant medical kit alone is not sufficient to prove cause of delay for the whole period stopped. Indeed, there should be precise explanation to rationalise the delay of 14 days before the applicant was admitted at Mirembe Hospital. However, in his affidavit as at paragraph 3, the applicant has merely narrated that, I will quote for neatness:

"That, after the said decision of the tribunal, I felt sick and I was hospitalised at Mirembe Hospital. And when I was discharged with prescriptions that I should proceed with treatment as an outpatient for seven months consecutively"

In my opinion, at best, the description is not enough. In the circumstance, one could expect more descriptive information showing when exactly his sickness started, how serious was it, when and how treatment steps were taken before the applicant had approached Hospital on 25/08/2021 for official treatment. Regrettably, all that information were overlooked by the applicant. And for that reason, it cannot be said with certainty that all days of delay were vindicated, see for instance how such situation was addressed in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christians Association of Tanzania** (supra).

At this juncture, it is clear that, the information availed in the affidavit is sketchy to make up a vibrant interpretation as to when his sickness started. The phrase "*after the said decision of the tribunal I felt sick*" can yield a number of assumptions. Presumably, it may be on the same day, or any other day before 25/08/2021 when the applicant officially reported at Hospital for medication where he was admitted.

On the other hand, there has been a contentious claim from the respondent's counter affidavit that, the applicant had never been admitted at Mirembe Hospital as he claimed. And so, during that time, he was

spending life at Songolo village as fit person. Apparently, the assertion was not disputed by the applicant in his submission.

In the end, all said and done, in the totality of the above assessment and reasoning, I have failed to find any convincing reasons which hindered the applicant from lodging his appeal on time. Generally, the ill-health reason uploaded marked to form a good cause for delay if well proved. See for instance in **Alhaji Abdallah Tajiri v. Eshakwendato Kiwelu Mushi** (supra). But, in the instance application, the reliance placed by the applicant did not sound good cause. The unjustified period of two weeks (14 days) was long enough to act precisely upon the requirement of the law.

That said, the applicant's failure to give compelling reasons as to why he failed to lodge his appeal within time prescribed by law afford no empathy. There has been unpolished sloppiness on the part of the applicant that disentitles him from benefiting the discretion of the court contained in section 38 (1) of the Land disputes Court Act, [Cap. 216 R. E. 2019] being exercised in his favour.

Therefore, the applicant's application lacks merit and has to fail. Thus,

I hereby dismiss the same. Parties to bear their own costs.

Ordered accordingly.

DATED at **DODOMA** this 21th day of May, 2024.



S. H. HASSAN

JUDGE

21/05/2024

This Ruling delivered this 21th day of May, 2024 in the presence of the parties.



S. H. HASSAN

JUDGE

21/05/2024