

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE SUB-REGISTRY OF SHINYANGA)  
AT SHINYANGA**

**MISC. LAND APPLICATION NO. 70 OF 2023**

*(Arising from Land Application No. 96/2015 in the District Land and Housing Tribunal  
for Maswa at Maswa J.T. Kaare- Chairman dated 26<sup>th</sup> day of June, 2023)*

**CHRISTOPHER KULWA MAJEBELE .....APPLICANT**

(Administrator of Deceased Estate of late **MAJEBELE MASANJA**)

**VERSUS**

- 1. SEGELE JELWA**
- 2. WILLIAM MAKALA**
- 3. ROBERT PUNGUJA**
- 4. YOHANA RUSHINA**
- 5. MWIGULU RUSHINA**
- 6. NKAMBA RUSHINA**
- 7. IBRAHIM HAJI**
- 8. MATHIAS GITU**
- 9. ATANAS MASENGELO**
- 10. KEPHER KUMILI**

**..... RESPONDENTS**

**RULING**

*Date of Last Order: 29.04.2024*

*Date of Ruling: 14.06.2024*

**MWAKAHESYA, J.:**

This is an application for extension of time to appeal to the Court of Appeal brought by the applicant, Christopher Kulwa Majebele, as he seeks to appeal against the decision of the District Land and Housing Tribunal for Maswa sitting at Maswa. The application has been made under section 41(2)

of the Land Disputes Courts Act and is brought by way of chamber summons, supported by the affidavit of the applicant himself.

Meanwhile, the respondents having defied the order of this court dated 08.02.2024 which was to the effect that they were to file their respective counter affidavits on or before 08.03.2024 are not contesting this application as it is proceeding *ex parte* against them.

The grounds in support of this application are well set out from paragraph 2 of the applicant's affidavit, and are reproduced as follows:

2. *That, I was applicant in the **Land Application No. 96 of 2015** held before the District Land and Housing Tribunal of Maswa at Maswa by **Hon. J.T Kaare-Chairman** the Judgment entered in favor of the Respondents herein then I was aggrieved with that judgment of the trial tribunal...*
3. *That, then after being aggrieved with the Judgment and Decree of the Trial Tribunal, the District Land and Housing Tribunal for Maswa at Maswa, the Applicant intended to appeal to the High Court herein with intent to challenge the said Judgment and Decree.*
4. *That, as the Applicant was required to lodge an appeal to this court as the required within forty-five good **(45)** days after delivery of trial tribunal Judgment unfortunately the time lapsed with no success but with bona fide reasons due to was not in good health and the same was hospitalized and attended to that effect failed to lodge an appeal within the time required by law...*
5. *That, when the Applicant was hospitalized and attended as patient then was found to be in regular benign prostate diagnosis by which was not again a wellbeing healthy*

- man as would either perform other activities at the same time been which was left in the hand of doctors and timely medical check-up for his healthy growth.*
- 6. That, that is was within the proximity of that time the Applicant was required to appeal to this court, it was on 13 July, 2023 when firstly Applicant seriously indulged and attended to clinical examination and found being in benign prostate then rested in this sufferings up to long delays as was required to take action on the decision so delivered by the trial tribunal.*
  - 7. That, the Applicant was lastly discharged at last on improved medication on 25/09/2023 though was still under condition if unstable then was given condition not to participate any regular duties and activities due to will be visiting regular planned Clinic to the so mentioned Medical Center, it was on 04/10/2023 was found at least improving on that regard.*
  - 8. That, from 04/09/2020 the date by which was discharged up to lodge this application was in struggle for healthy improvement and legal compliance to lodge an appeal then started a follow up to channel this Application to be extended with time to appeal to this Honorable Court though was in still healthy status.*
  - 9. That, the fact that the Applicant was hospitalized, attended and was in the schedule of Clinical Attendances and the fact that the applicant has counted the day of delays without holed doubts the same proof of justification to warrant this application.*
  - 10. That, due to the delay is of reasonable cause and there approximately high chance to win on appeal as the decision engulfed with irregularities as trial tribunal did not discuss the result as for the locus in cool and embarking to discuss other set of other evidence which was new fact contrarily, in that sense the Applicant seems it just to apply before this honourable court for extension of time as the requirement of law and wisdom of this very Court.*
  - 11. That, the said Judgment in **Land Application No. 96 of 2015** was illegally and irregularly procured hence went against with the direction of the Resident Magistrate Court Judgment with Extended Jurisdiction in **Land Appeal No. 05 of 2020** which directed the Trial Court to act on its direction of visiting **Locus in Quo** then make and compose only Judgment on that bases...*

*12. That on the Judgment of the Resident Magistrate court the Chairman of the Trial Tribunal was directed to visit Locus in Quo by which did but unfortunately did not use the result obtained in composing Judgment lastly established new fact which was contravenes that stands and direction because was necessary as to the nature of case was before the Tribunal.*

The relevant provision that governs appeals from the District Land and Housing Tribunals to the High Court is section 41 of the Land Disputes Courts Act. The said provision reads:

*41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.*

*(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: Provided that, the High Court may, **for the good cause**, extend the time for filing an appeal either before or after the expiration of such period of forty five days.*

[Emphasis added]

As what amounts to “good cause” various decisions of the Court have attempted to defined. While in **Laurent Simon Assenga v. Joseph Magoso and 2 Others**, Civil Application No. 50 of 2016 (unreported) it was held that,

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

In **Airtel Tanzania Limited v. Misterlight Electrical Installation Ltd. And Another**, Civil Application No. 37/01 Of 2020 (unreported) it was held that:

*"...It may not be possible to lay down an invariable or constant definition of the phrase "good cause" but the Court consistently considers such factors like, the length of delay involved, the reasons for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the Court exercises its discretion; the conduct of the parties, and the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal."*

Thus, there is no clear definition of "good cause" but it rather depends on the circumstances of each case. In applying **Airtel Tanzania Limited** (supra) to the present application, the decision of the Maswa District Land and Housing Tribunal was delivered on 26.06.2023, and thus taking into account section 60(1)(b) of the Interpretation of Laws Act, the date of delivery of the judgment is not reckoned in the 45 days within which the applicant was supposed to file an appeal to this court. Thus, counting from 27.06.2023 the time for appeal ran out on 10.08.2023. The present application for extension of time was filed on 27.10.2023 that is over 79 days after the period of limitation ended.

Applying the time and tested rule that in an application for extension of time, an applicant has to account for each day of delay, the applicant has to account for the 79 days that he was out of time, see **Airtel Tanzania Limited's case** (*supra*).

In paragraph 7 of the applicant's affidavit it is revealed that from 04.10.2023 that is when the applicant's condition started improving, therefore, I surmise that, from that date onwards the applicant was in the position to lodge the instant application, we are left with a period of about 22 days that the applicant has to account for. Unfortunately, the applicant has not been able to account for that number of days.

The applicant has tried to raise the issue that the chairman of the DLHT did not visit the locus in quo as directed by the learned Resident Magistrate with extended appellate jurisdiction, however, I do not see how it masks the fact that he was inadvertent in filing the present matter. Furthermore, dealing with the same might equate to dealing with any potential ground of appeal prematurely.

In the upshot, this application lacks merit and is hereby dismissed with costs.

It is so ordered.



A handwritten signature in black ink, consisting of a series of loops and a long, sweeping tail.

**N.L. MWAKAHESYA**

**JUDGE**

**14/06/2024**