

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

MISCELLANEOUS LAND APPLICATION NO. 26417 OF 2023

(From the decision of the District Land and Housing Tribunal for Rukwa at Namanyere
in Land Application No. 49/2022. Originating from Itete Ward Tribunal at Kirando)

JAMES S/O MASONGA APPLICANT

VERSUS

MWAVITA CHELE RESPONDENT

RULING

MWENEMPAZI, J.

The applicant has made this application under section 38(1) of the Land Disputes Courts Act, [216 R.E 2019], section 95 and 68(e) of the Civil Procedure Code, [Cap 33 R.E 2002].

He is applying for the orders that this court be pleased to extend time for the applicant to file an appeal out of time; costs of the suit be provided for and any other relief this court may deem it necessary to issue.

The application is supported by an affidavit sworn by one James Masonga, who is the applicant herein. He has stated in the affidavit that he was the respondent in the application No. 49 of 2023. That the judgment in that land application was delivered on the 24th July, 2023. At the time he was sick, he went for treatment to the traditional healer. He has stated he has sufficient reasons because he was serious sick.

On the 23/02/2023 when the case was scheduled for hearing, the applicant informed this court that he served the respondent through a village chairman, but the respondent refused to receive and sign the summons. He supplied a copy of summons to the court, which copy of summons was endorsed by the village chairman. An order was thus issued to proceed with hearing on 26/03/2024.

At the hearing the applicant submitted that the impugned judgment was scheduled to be delivered on the 16/06/2023. However, on the date the chairman informed the parties that she has not finished composing a judgment. The date for delivery was rescheduled to 24/07/2023. On that date the applicant was sick and he had gone to the traditional healer to seek treatment. After he had been relieved, he went back to the District Land

and Housing Tribunal for a copy of judgment. He was surprised to find that it was recorded in the records of the tribunal that he was present on the date of delivery of judgment though also he did not win the case. Therefore he media decision to appeal. Hence he filed this application in effort to appeal against the decision. He prayed that he be allowed to appeal out of time.

In this case, the respondent refused to receive and sign the summons. The applicant however has stated the fact in the course of hearing of the application, in particular on the 23/02/2024. The applicant stated in the affidavit that he became sick after the matter was rescheduled for decision handing down on the 24/07/2023. The decision was handed down at the time he had gone to the traditional healer for treatment. Honestly, at first it was difficult for me to believe the statement but it shows that he is honest as he revealed that when the matter came for delivery of decision he was absent although it was recorded that he was present.

In the case of **Emmanuel P. Maira Vs. The District executive Director Bunda District Council**, Civil Application No. 66 of 2010, Court of Appeal of Tanzania at Dar es Salaam (Tanzilii) it was observed that: -

"Health matters, in most cases, are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike. Applicant's failure to file the notice of appeal between the handing down of the decision (27/08/2022) and March, 2003 has a good cause behind; first he was not notified of its existence, and secondly, the health incapacitation bail him out"

This application was filed immediately the applicant became aware that the decision was not in his favour's that is, when he went to the District Land and Housing Tribunal to collect a copy of the decision.

In my opinion, the applicant expressed what really transpired and genuinely he has accounted for the delay despite his failure to show evidence that he went for treatment to the traditional healer. Taking into account the local culture and the mode of operation of traditional healers, it would be difficult for further proof other than a sworn statement, which in my opinion is a honest one.

Under the circumstances, I am satisfied that the applicant has been able to show a good cause for delay. I therefore grant the application. The

applicant should file an appeal to the High Court within sixty (60) days from the date of this ruling.

It is ordered accordingly.

Dated and signed at Sumbawanga this 22nd day of May, 2024.


T. M. MWENEMPAZI
JUDGE

Ruling delivered in the judge's chamber this 22nd day of May, 2024 in the presence of the applicant and absence of the respondent.




T. M. MWENEMPAZI
JUDGE
22/05/2024