

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(IRINGA SUB-REGISTRY)

AT IRINGA

MISCELLANEOUS LAND APPLICATION NO. 23 OF 2022

(Originating from the decision of the District Land and Housing Tribunal for Njombe in
Njombe in Land Application No. 05 of 2019)

GOTLIB CHENGULA (As Administrator of the Estate of the Late

MAGDALENA LUPUMBWE **APPLICANT**

VERSUS

1. FESTO LUPUMBWE

2. MATERNUS LUPUMBWE

3. VICTORIA LWIVA



..... **RESPONDENTS**

RULING

Date of Last Order: 28/03/2024 &
Date of Ruling: 07/05/2024

S.M. KALUNDE, J.:

By way of a chamber summons preferred under sections 41(2) of **the Land Disputes Courts Act [Cap. 216 R.E. 2019]** (hereinafter "**the LDCA**") and 14(1) of **the Law of Limitation Act [Cap. 89 R.E. 2019]** ("**the LLA**"), the applicant in his capacity as the Administrator of the estate of the late **MAGDALENA LUPUMBWE**, lodged the present application seeking for the following reliefs:

(a) That, this Honourable Court be pleased to grant an order for extension of time to file an appeal to this court out of prescribed time against the decision of the District Land and Housing Tribunal for Njombe in Njombe in Land Application No. 05 of 2019;

(b) Any other relief (s) this Court may deem fit and just to grant.

(c) Costs be provided for.

The application is supported by an affidavit dully sworn by Mr. GOTLIB CHENGULA, the applicant. Believing that they have no interests against the application, the respondents did not file their counter affidavit.

Before the court for hearing, the applicant appeared in person unrepresented, while the respondents were represented by Mr. Jerome Njiwa, learned advocate.

In support of the application, the applicant briefly invited the court to adopt and consider his application as contained in the chamber summons and affidavit filed in support of the application. Submitting further, the applicant contended that he was old and sick

and therefore it was costly for him to prosecute the application. In the end, he prayed that the application be granted.

Supporting the application, Mr. Njiwa submitted that his clients have never claimed ownership over suit property as they were leasing the same from the village government and have since vacated from the suit property. He added that currently, the respondents were not in occupancy of the suit property. It was for these reasons that he supported the application and prayed that the application be granted.

For my part, I have carefully read the chamber application and the flanking affidavit and considered the brief submissions of the parties. My duty now is to resolve whether the applicant has demonstrated "good cause" as required by section 41(2) of the LDCA for this court to condone the delay. The entire section 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 is mine]

I am aware that in light of the decision of the Court of Appeal in the case of **Regional Manager, TANROADS Kagera vs Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2007 (unreported), what constitutes sufficient cause cannot be easily laid down by any hard and fast rules. In determining whether a particular ground is or is not a good cause courts must consider all circumstances of each particular case. This means that, an applicant must place before the court all relevant material which will move the court to exercise its judicial discretion in order to extend time limited by an Act or Rules.

In the present application, the decision sought to be challenged was delivered on the 01st day of December, 2022. In accordance with paragraphs 3 and 4 of the affidavit filed in support of the application, the applicant alleges that, immediately after delivery of the impugned decision he got struck by stroke and high pressure. He was eventually hospitalized at Kibena Hospital and upon his recovery he

was directed to attend physio clicks which he is still attending to date. He appended medical chits to support his contention that he was admitted at Kibena Hospital in Njombe Region.

From the pleading and submissions before the court, the applicant seems to allege that delay in filing the appeal was due to sickness. Admittedly, the applicant is an old person. remnants of sickness were also visible before the court as he is still shivering even as he was addressing the court.

It is trite that sickness may be a good cause for extension of time if it is supported by medical chits and evidence that it was actually the sickness that precluded the applicant from prosecuting the matter. Solace on this is found in the Court of Appeal decisions in the case of **Director Ruhonge Enterprises vs January Lichinga**, Civil Application No 1 of 2006; **Emmanuel R. Maira vs The District Executive Director of Bunda District Council**, Civil Application No. 66 of 2010; and **John David Kashekya vs. The Attorney General**, Civil Application No. 1 of 2012 (all unreported).

In **John David Kashekya case** (supra), the Court considered the fact that an applicant took three weeks to rest before filing an

application. This was after he had been sick for almost six months.

The Court made the following observations:

"... sickness is a condition which is experienced by the person who is sick. It is not a shared experience. Except for children who are not yet in a position to express their feelings, it is the sick person who can express his/her condition whether he/she has strength to move, work and do whatever kind of work he is required to do. In this regard it is the applicant who says he was sick and he produced medical chits to show that he reported to a doctor for checkup for one year. There is no evidence from the respondent to show that after that period, his condition immediately became better and he was able to come to Court and pursue his case. Under such circumstances, I do not see reasons for doubting his health condition. I find the reason of sickness given by the applicant to be sufficient reason for granting the application for extension of time..."

I have demonstrated above that the applicant suffered from stroke after the delivery of the impugned decision. He attached medical chits in support of his claims. He argued that after his recovery we collected the relevant documents and filed the present application. It is on record that the present application was filed on the 24th day of July, 2023. The applicant was experiencing uncontrollable shaking as he made his submissions before the court. It is also clear from the record that the respondent did not resist the application. The application remains unchallenged.


That said, I am satisfied that sickness as pleaded by the applicant is a good cause for this court to exercise its discretion in extending time so that the applicant may file his appeal out of time.

For the foregoing reasons, I find the application to be meritorious. It is accordingly allowed. The upshot of the matter is that the appeal must be filed within forty five (45) days from the date of this decision.

It is so ordered.

DATED at IRINGA this 07th day of May, 2024.




S.M. KALUNDE
JUDGE