

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**MISC. LAND APPLICATION NO. 23 OF 2023**

*(Arising from the Land Application No. 23 of 2021 before the District Land and Housing Tribunal of Maswa at Maswa)*

**JOSIAH MIPAWA ..... APPLICANT**

*(Administrator of the estate of the late Tiras Mipawa Migungumalo)*

**VERSUS**

**SELEMAN KATUGA ..... RESPONDENT**

**RULING**

7<sup>th</sup> February & 08<sup>th</sup> March 2024.

**MASSAM J.**

Before the District Land and Housing Tribunal of Maswa at Maswa, the applicant in Land Application No, 23 of 2021, took legal action against the respondent claiming that, the respondent had trespassed the land of his father who is now a deceased (Tiras Mipawa Migungumalo).

Before the commencement of the hearing, the respondent raised a *Plea in limine litis* to the effect that, the applicant failed to describe the location of the disputed land property and the matter was time barred.

Upon hearing the *Plea in limine litis* inter parties, the trial tribunal sustained it to the effect that the application is incompetent for

failure to describe the location of the disputed land, and that, the application is time barred.

Being pained by the ruling and orders of the trial tribunal, the appellant filled Misc. Land Application No. 10 of 2022 before this court, which was similarly withdrawn with leave to refile another application, hence this application for extension of time within which to file an appeal out of time against the ruling and orders of the land application No. 23 of 2021 from the District Land and Housing Tribunal of Maswa.

The application was made by way of Chamber Summons under Section 41(2) of the Land Disputes Courts Act [ Cap 216 R; E 2019] as amended by Section 41 of the Written Laws (Miscellaneous Amendment (Act No. 04 of 2016) accompanied by an affidavit sworn by Josiah Mipawa supporting the application and opposed by the counter affidavit dully sworn by the respondent.

During the hearing of this application, the applicant enjoyed legal service of Mr. Ijan learned Advocate, while the respondent appeared in person, unrepresented.

Arguing in support of the application, the applicant's counsel adopted the affidavit by the applicant to form part of his submission.

The applicant submitted that, he is applying for an extension of time, to file an appeal out of time for the reasons that, on 26/08/2021 it is when the ruling was delivered and he lost his case, unfortunately he felt sick and taken to the hospital as per a medical certificate attached to his affidavit, as he was admitted on 26/08/2021 and discharged on 16/09/2021 and continued with treatment at home.

Thereafter, he wrote a letter on 20/10/2021 to DLHT to be availed with the copies of ruling and proceedings but unfortunately, he was not given on time hence time to appeal lapsed on 9/10/2021.

Later on, he was supplied with the copies of judgment on 25/02/2022 but again were not certified to show when was it supplied to him. He decided to file an application number 10 of 2022 on 16/03/2022 but it was withdrawn, hence the current application for extension of time as prayed in the chamber application.

The respondent resisted the application to the effect that, the applicant is lying since, on 6/12/2021 he went to the Tribunal at Mwanahina Meatu and filled a case and the applicant lost it as he was complaining about four acres while, the respondent, owned only two acres.



In his rejoinder the applicant's advocate maintained that, what they have succumbed is true, thus they prayed to this court to grant time to lodge an appeal.

Having heard and consider the submissions by both parties, the issue is ***whether the application discloses sufficient cause for extension of time.***

After going through the parties' arguments, I noticed that the applicant prayed to this court to be granted extension of time to file an appeal out of time due to sickness and delay by the trial tribunal to supply the copies of judgment on time.

To commence with, it is clear in the case of **TangaCement Company Limited Vs Masangaand Amos A. Mwalwanda**, Civil application No.6 of 2001, for a person to apply for extension of time, has to disclose sufficient reasons, which was defined as follows;

***"What amounts to sufficient cause had not be defined. From decided cases a number of factor have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant."***

However, there are also other factors that are used to determine whether the applicant has shown good and reasonable cause such as the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant. See the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

With regard to the issue of sickness, the law is well known that, sickness is a condition which is experienced by the person who is sick and that it is not a shared experience except for a sick person who is in a position to express her or his feelings. This is well elaborated in the case of **John David Kashekya Vs The Attorney General** civil application No 1 of 2012 (unreported). However in order for the sickness to be a sufficient cause the same must be sufficiently proved. It is well known that sickness is a condition which is beyond human control, nevertheless as I said before there must be satisfactory reasons and the same must be proved satisfactorily. This was fittingly explained in the case of **Emanuel R. Maira vs The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported) that;

***"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone beheld to blame when they strike."***

Again, in the case of **Beatus Laurian Ndihaye versus Mariam Kitoela**, Miscellaneous Civil Application No.6 of 2021, the court held that;

***" The applicant's only reason advanced is illness. I am well aware that as of late there are decisions which are to the effect that illness constitutes sufficient cause for extension of time. However, such illness must be sufficiently proved. Looking at the affidavit filed in support of the application, the applicant has attached to the affidavit a letter from the traditional healer indicating that he was admitted at his place where he was receiving treatment and was later discharged after he was well. That traditional healer further proved his professionalism by attaching a copy of his Certificate of incorporation No. A.91041 issued on 29/01/2019. The reason advanced by the applicant suffices to be sufficient cause upon which this court can exercise its discretion"***



In the presence case, since the applicant's affidavit was supported with annexure" JM1" which is a medical report showing that, he was admitted at Maswa District Hospital on 26/08/2021 and was discharged on 16/09/2021, and also as per the contents of his affidavit, thus, this is a sufficient reason to prove that, the applicant was sick and failed to lodge his appeal on time.

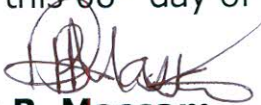
Besides, the appellant contended that, after he had recovered, he applied to the tribunal to be supplied with the copies of judgment and proceedings and as per annexure JM2 unsuccessfully, and the same was supplied to him on 25/02/2022, but then again was not certified.

Although there was no any appropriate evidence or any supporting documents on this, but this court is well gratified that, even the first reasons explained previous is enough as the applicant accomplished to validate to have this application granted.

Guided by the above authorities this court does not see the reason as to why this application should not be granted. That being said this court is fully satisfied that the applicant has demonstrated good cause to have the order sought granted. Subsequently, this application is allowed and the applicant is granted time for lodging an appeal from the orders of the District Land and Housing Tribunal dated on 28/08/2021

and shall be lodged within 14 days from the date of delivery of this ruling. I make no orders for costs. It was so ordered.

**DATED** at **SHINYANGA** this 08<sup>th</sup> day of March, 2024.



**R.B .Massam**  
**JUDGE**  
**08/03/2024.**

