

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS LAND APPLICATION NO 2 OF 2021

MALIMA BITA APPLICANT

VERSUS

MUSA MALIMA RESPONDENT

(Arising from Land Appeal No. 08/2020 at the District Land and Housing Tribunal for Mara at Musoma, Original Land Case No. 13/2019 Tegeruka Ward Tribunal)

RULING

3rd & 16th August, 2021

Kahyoza, J.

This ruling is in respect of an application for extension of time filed by Malima Bitu. Malima Bitu intends to appeal against the decision of the district land and housing tribunal (the DLHT) dated 17th **July**, 2020. Musa Malima filed a counter affidavit to oppose the application.

The applicant's grounds of delay discerned from the affidavit and the applicant's advocates submission is that the applicant delayed to appeal because he fell sick. He contracted mental illness. The applicant's advocate submitted that the applicant was very old person as he is 70 years old.

The respondent who enjoyed the services of Mr. Makowe advocate submitted that the applicant did not adduce good reasons for delay. He submitted that the applicant failed to prove that sickness prevented him to

appeal as he tendered a letter instead of medical chit. He submitted further that the letter was written on the 24th September, 2020 and that the author's title is not indicated. He added that the letter did not give an account of the applicant's illness.

The respondent's advocate submitted that the applicant did not account for all days of delay. He contended that it is trite law the applicant ought to account all days of delay. To buttress his argument, he cited the case **Aziz Mohamed v R.**, Cr. Appeal 44/07 of 2016 CAT (unreported) at pg. 6 and **FINCA (TZ) Ltd & Another V. Boniphace Mwalukisa** Civ.Appl. 586/12 of 2018 CAT. He submitted that the applicant did not account for all days of delay.

In his rejoinder, the applicant's advocate, submitted that a medical report is a confidential information. It can be made available to the court upon request. He submitted that the applicant did not account for the delay from the date of the letter from the hospital until when the current application was filed.

A person applying for extension of time must adduced reason(s) for delay. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. (See **Dar es Salaam City Council v. Jayantilal P. Rajani**, CAT Civil Application No. 27 of 1987 (unreported)).

The applicant's ground of delay was that he fell sick. He was mentally sick. The applicant had a duty to establish that he was sick. The only evidence the applicant tendered was a letter from the medical officer in charge's office. The letter indicated that the applicant fell from 17th July, 2020 and 4th December, 2020. I am not convinced that the letter proved that the applicant was sick and was being attended at that hospital. The author did not indicate his position. It is not clear whether he is the doctor who attended the applicant or the officer who got information from the applicant's medical file. Worse still, it is not clear why did the author write the letter. Did he write a letter at the applicant request? Why did the applicant request that letter? The applicant could have proved to be treated by tendering a receipt of paying for the services or if he was admitted by tendering the admission and discharge chit. The DLHT delivered its judgment on the 17th July, 2020 in the presence of the applicant and that on the 20th July, 2020 the applicant fell sick. It is not indicated whether he was admitted and if he was so admitted when was he discharged. In short, the letter left much to be desired.

Even if, it is true that the applicant fell sick immediately after he lost the suit and recovered on the 4th December, 2020, why did he take 46 days to institute the current application. The applicant's affidavit is silent, it does give reason for the delay. He was not diligent. The applicant's advocate submitted that the applicant took 46 days before he filed the current application because he was an old man. Old age is not a good ground for delay. This position was stated in the case of **Zebitisi Kawuku V. A. Karim (1938) 5 ECCA 37** where it was held that-

*"Ignorance of law, **old age** and lack of means are not good grounds for allowing an appeal out of time."*

In addition, even if old age was a good ground for delay. It is obvious that the applicant did not advance old age as the reason for delay in his affidavit. It is the applicant's advocate who submitted that the applicant delayed to apply for extension of time to appeal because he was very old. He stated that his client was 73 years old. It is trite law that reasons for delay must be reflected in the affidavit. Submissions are not evidence but explanations on the evidence already tendered. (See the case of the **Registered Trustees of the Arch Dioceses of Dsm vs. The Chairman Bunju Government and Others**, Civil Case No. 147 of 2006).

The respondent's advocate submitted that applicant did not discharge his duty of accounting all days of delay. He cited two cases to support his argument that the applicant had a duty to account for days of delay. It is now an established principle of law that the delay even of a single day must be accounted for otherwise there would be no point of having rules prescribing periods within, which certain steps must be taken. See the case **Hassan Bushiri V Latifa Lukio Mashayo** CAT Civ. Application No. 3/2001 (unreported). The applicant accounted the delay from 17th July 2020 to 4/12/2020 to his sickness and did not account for delay from 4/12/2020 to 19/01/2021 when he filed the current application. The applicant did not account for 46 days of delay.

In the upshot, I find the applicant failed to adduce sufficient reason for delay or account for days of delay. Consequently, I dismiss the application with costs.

I order accordingly.



J. R. Kahyoza

JUDGE

16/8/2021

Court: Ruling delivered in the remote presence Mr. Makowe, the respondent's advocate and in the absence of the applicant and his advocate who was reported sick. B/C Makunja present.



J. R. Kahyoza,

JUDGE

16/8/2021