

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND/APPLICATION NO. 31 OF 2010

LAURENSIA MATEMUAPPLICANT

VERSUS

COSMOS TARIMO & 3 OTHERSRESPONDENT

R U L I N G

FIKIRINI, J:

Laurensia Matemu hereinafter referred as the applicant, is moving this court by way of Chamber Summons under section 38 (1) of The Land Courts Acts, 2002, section 95 of the Civil Procedure Code, R.E. 2002 and any other enabling provisions of the law, requesting for extension of time to file appeal out of time.

The applicant's application is supported by her affidavit. In the affidavit the applicant stated sickness as the reason behind her failure to file a timely appeal. She as well stated that if this application will not be granted she is

bound to suffer irreparable loss. In support of the affidavit the applicant attached a copy of judgment appealed against and a letter dated 19th September 2010 and outpatient record card to prove her sickness.

The respondents namely Cosmos Tarimo, Leticia P. Kivuyo, Lilian Mushi and Sophia H. Mrema (administratrix of the estate of the late Humphrey Mrema) jointly countered the application. It was their statement that the certified copies judgment and decree were ready for collection since 10th November 2009. They therefore wonder as to why she did not collect her copy of then and file an intended appeal. The respondents did not understand why had it to wait until the 20th April 2010? This was the concern even for the copies alleged to be received in February.

The respondents avowed further that the applicant has failed to demonstrate sufficient cause for the delay in lodging her appeal since the letter marked M2 indicating the applicant indisposition does not show she was further indisposed after the 19th September, 2009. According to respondents the applicant was negligent in pursuing her case. More so, no sufficient cause has been made out to warrant granting of the application for extension of time and equally there was no particular loss stated to justify this court to exercise its discretion in her favour. They therefore pray for the dismissal of the application.

After careful review of the application and the affidavits attached thereto, the following were my observation that the application though properly before the court but I must admit without sufficient cause. The judgment in the land application number 435 of 2008 was delivered on the 17th September 2009. Certified copies were ready by 10th

November 2009. Therefore any time after the 10th of November the certified copies could have been collected and processed further. But that was not the case with the applicant.

From the applicant's affidavit she got her copies in February, though it was not disclosed how she got them. However, no application was lodged right away. This application was lodged on 20th April 2010 which was almost two months or so after getting the certified copies necessary for the process of filing this application. No any account was given as to why all the delay.

Despite being out of time but the applicant did not have any sufficient cause shown. This concern was as well shared by the respondents that no sufficient cause was adduced to warrant this court to exercise its discretion and grant the application. The applicant asserted sickness as the reason behind her failure to file a timely appeal. She attached a letter from Apostle of Jesus Njia Health Centre and a medical chit. Both documents were generated on the 19th September 2009. From reading of the documents there was no indication that the applicant was admitted and if so, then it was only for a day. It is therefore proper to say, that she had all the time up to November 2009, when the copies were ready.

My concern is if the certified copies were issued on 10th November 2009, which was way after the applicant's sickness then where was she all these time? More so, since the alleged sickness was not over a period of time, it thus compels me to conclude that it could not be raised as a reason for untimely filing of her appeal. This is as far as November date is concerned and sickness being the reason.

With the February date, again it took the applicant about two months or so to file this application. No reasons were given as to why it took her that long to do so. Hurriedly looking at the flow of events it is tempting to outright rule that this application is hopelessly time barred and since no sufficient cause has been raised to move this court, then it deserves no further consideration.

I would have definitely concluded so had the judgment of the District Land and Housing Tribunal allowed me to do so. But it has not. This is because my reviewing of the said judgment compelled me to see that the District Land and Housing Tribunal decision was not properly arrived at, and by so doing caused injustice to the present applicant. My reasons are: first, from the testimonies of PW2 one Shabani Uliza and that of DW2 one Akili Athumani Musa there seem to be an issue which needed to be resolved. In my view it was important to know if the disputed land was part of Bunju and hence under Bunju local authority or Mabwe Pande as alleged by DW2. This is because if this are two different areas and under separate local government authorities then there is a possibility of cross overs of authorities which was not proper and perhaps illegal. Second the chairman did not give the reasons as to why he preferred the evidence of PW2 to that of DW2, while both had testimonies which could convince the chairman. More so, it is a requirement that reasons are given for the decisions arrived at. This is pursuant to Order XX Rule 4 of the CPC, Cap 33. Third, the applicant refuted to have been given 90 days notice to comply with the local authority order of developing the same or it will be confiscated and allocated to other people. The chairman did not consider that.

In my view these were important issues which needed thorough consideration before the chairman arrived at its decision. It had been stated a number of times that legal issues of paramount importance is a good cause for extension of time. This has been the position in ***the Principal Secretary, Ministry of Defence versus Duram P. Valambhia [1992] TLR 387***, CAT where it was stated that; “*where the point of law at issue is the illegality or otherwise of the decision being challenged, that is a point of law of sufficient importance to constitute a sufficient reasons*” other cases are ***R. versus Hammod [1972] HCD 30, and Sileke Sangalala versus Elias Bebwa Civil Appeal No. 155 of 1993*** (unreported).

This application in my view deserves grant so that those unresolved issues could be resolved. Otherwise justice would not be considered met. It was as well important to consider the chances of the intended appeal to succeed as propounded in the case of ***Rajabu Kadimwa versus Adi Adam [1991] TLR 38***. In my view there is a possibility of success of the intended appeal.

With that in mind and other reasons raised above, I am of the view that this application deserves grant and consequently proceed to grant the leave to file appeal out of time.

It is so ordered.

This Ruling Delivered this 17th September 2012, in the presence of parties.

P.S. FIKIRINI

JUDGE

17TH SEPTEMBER 2012

Right of Appeal Explained.

P.S. FIKIRINI

JUDGE

17TH SEPTEMBER, 2012