

IN THE HIGH COURT OF TANZANIA  
[LAND DIVISION]  
AT IRINGA

MISCELLANEOUS LAND CASE APPLICATION NO. 37 OF 2012

(From the Decision of the High Court of Tanzania  
at Iringa in Land Case Appeal No. 7 of 2010 and  
Original Land Case No. 37/2008 of the District Land and  
Housing Tribunal of Iringa District at Iringa)

KASSIM YAKUB MWINYIJUMA ..... APPLICANT

VERSUS

IRINGA MUNICIPAL COUNCIL ..... RESPONDENT

25/7/2014 & 22/8/2014.

**R U L I N G**

MADAM SHANGALI, J.

In Land Appeal No. 7 of 2010 before this Court (*Hon. Mkuye, J.*) the present applicant KASSIM YAKUB MWINYIJUMA had lost his appeal against the present respondent IRINGA MUNICIPAL COUNCIL.

Aggrieved with that decision he started to proceed his second appeal attempt to the Court of Appeal of Tanzania.

Accordingly he filed Misc. Land Case Application No. 22 of 2010 seeking for the leave to appeal to the Court of Appeal of Tanzania under Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141.

On 12/6/2012, his application was struck out for contravening the provisions of Rule 45 (a) of the Tanzania Court of Appeal Rules 2009 which direct such applications to be filed within fourteen days from the decision of this court. In other words the application was struck out for being time bared.

In his efforts and eagerness to rectify the matter, the applicant filed another application Misc. Land Case Application No. 11 of 2012 under the provisions of Section 95 of the Civil Procedure Code, Cap. 33 (*R.E. 2002*) Section 5 (1) (c) and 11 of the Appellate Jurisdiction Act, 1979 Cap. 141 (*R.E.2002*) and any other enabling provision of the law for the time being in force, seeking for extension of time to apply leave of the High Court to appeal to the Court of Appeal and leave to appeal to the Court of Appeal against the decision of this court dated 21<sup>st</sup> October, 2010. That application was struck out on 6/12/2012 before this court (*Hon. Kihio, J.*) for being filed under irrelevant provisions of the law.

Undeterred, the applicant has now filed this application under the provisions of Section 11 (1) of the Appellate

Jurisdiction Act, 1979 Cap. 141. In this application the applicant is praying for extension of time to apply for leave of the High Court to appeal to the Court of Appeal against the decision of this court dated 21<sup>st</sup> October, 2010 and to be granted leave to appeal to the Court of Appeal against the decision of this court dated 21<sup>st</sup> October, 2010.

In this application the applicant appeared in person while the respondent was represented by Mr. Kihaga, learned Solicitor. On the request of the parties this court allowed them to argue the application by way of written submission.

In his brief submission the applicant stated that the High Court decision intended for appeal was given on 21<sup>st</sup> October, 2010 and the Notice of Appeal was filed on 29<sup>th</sup> October, 2010, that is eight days from the date of decision. He further stated that the application for leave to appeal was filed on 19<sup>th</sup> November, 2010, that is twenty eight days from the date of the High Court decision which was contrary to the requirements of Rule 45 (a) of the Court of Appeal Rules 2009.

The applicant stated that he delayed to file the application within prescribed time of fourteen days because he was sick from 1<sup>st</sup> November, 2010 to 17<sup>th</sup> November, 2010 suffering from Blood Pressure caused by excessive blood sugar in his body. That he was attended medication at Pisalala Dispensary situated in Iringa Municipality as shown in his

receipts attached to the affidavit in support of the application. That having been relieved from such illness, the applicant prepared his application on 18<sup>th</sup> November, 2010 and filed the same on 19<sup>th</sup> November, 2010, amid out of time.

The applicant contended that if the application for extension of time to apply for leave to appeal to the Court of Appeal is not granted, the heir of the house demolished by the respondent will suffer irreparably. He finally prayed the court to grant both extension of time and subsequent leave to appeal to the Court of Appeal.

In response Mr. Kihaga, learned Solicitor set to oppose the application and submitted to the effect that the medical examination chits attached to the Chamber Summons show that the applicant attended Pisalala Dispensary only twice, i.e. on 1<sup>st</sup> November, 2010 and 18<sup>th</sup> November, 2010 and not as stated by the applicant that he was under medical care or Dispensary bed rest from 1<sup>st</sup> November, 2010 to 17<sup>th</sup> November, 2010. He further contended that the attached medical chits have a name of one Mwinyi Juma and not the applicant's name Kassim Yakub Mwinyijuma.

Mr. Kihaga submitted that the court have discretion to extend time but such extension, in the words of Rule 10 of the Court of Appeal Rules of 2009 can only be exercised where

sufficient reasons for delay has been given. He contended that in this particular application there are no sufficient reasons for the grant of application. He prayed the application to be dismissed with costs.

I have critically examined the merits and demerits of this application and the type of remedies sought by the applicant. The application for leave to appeal to the Court of Appeal as shown in the Chamber Summons was wrongly placed in this application filed under Section 11 (1) of the Appellate Jurisdiction Act, 1979 which deals only with extension of time by the High Court. Application for leave to appeal to the Court of Appeal is sought under Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141. No wonder the applicant did not make any remarkable submission seeking for grant for leave to appeal to the Court of Appeal.

That being the position, I will now turn to consider the application for extension of time to apply for leave to appeal to the Court of Appeal. This request is not free from serious problems.

Having considered the application as a whole and the submission from both sides I am inclined to side with the respondent's counsel because the attached two medical chits are merely medical examination or test chits for blood sugar content carried out on 1<sup>st</sup> November, 2010 and 18<sup>th</sup> November,

2010. There was no medical treatment effected to the applicant and indeed he never appeared or attended before any medical doctor for treatment. In my considered opinion such medical examination/test conducted in two separate days cannot be used to form sufficient reason to the extent of exempting the applicant from filing his application for leave to appeal in time. To crown it all the said medical test chits indicate the name of Mwinyi Juma instead of the applicant name Kassim yakub Mwinyijuma.

To say the least the allegation by the applicant that from 1<sup>st</sup> November, 2010 to 17<sup>th</sup> November, 2010 he was suffering from Blood Pressure caused by excessive blood sugar "***Diabetes mellitus***" for which he was attended medication at Pisalala Dispensary has no leg to support. It is a mere concocted story with no evidence to substantiate.

In addition and having scanned the record of proceedings and decision intended to be impugned, I am certain that the intended appeal has no chance of success.

In conclusion this application is hereby rejected and dismissed with costs.

M. S. SHANGALI

**JUDGE**

22.8.2014