

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

LAND APPEAL NO. 47 OF 2013

(Arising from Misc. Land Application No. 26 of 2013 and Land Appeal No. 29/2009 of District Land and Housing Tribunal for Kigoma)

DENIZA D/O HASSANAPPELLANT

VERSUS

NDOBHEWE NYILAMBIGWARESPONDENT

JUDGMENT

24th Sept & 19th Nov, 2014

RUMANYIKA, J

It is all against the decision of the District land and housing tribunal – Kigoma (the DLHT) dismissing on 10/07/2013, application for extension of time by the present Appellant for setting set aside the DLHT's dismissal order on appeal NO. 26 of 2009 on 9th February, 2010.

Mr. M.R.G. Kabuguzi appears for the Appellant. The Respondent appears in person.

There are 4 grounds of appeal. But may boil down to ONLY ONE:-

The learned Chair having failed to hold that on strength of the sickness pleaded the Appellant had assigned sufficient reasons for granting extension of time.

Arguing the grounds combined but supported with affidavit of M.R.G. Kabuguzi whose contents counsel adopted entirely, Mr. Kabuguzi submitted that having lodged the appeal timely she fell sick and it was dismissed in her absence on 13.04.2011. Reasons assigned were sufficient save for omission of name of the deponent of the material affidavit. Nevertheless application ought to have been struck out. Not dismissed as the learned chair wrongly did. That despite several requests for copy of the order nothing came out. It was late for them to go back to the DLHT and have it restored. One had appeal option only. The elderly lady had sufficient ground to grant her extension of time. Stressed Mr. Kabuguzi.

In his reply Mr. Ladislaus just submitted that non appearance of the Appellant was not justified. As was not really indisposed. That is it.

The bottom line is good and sufficient caused. However the application was disposed of on two points mainly: One; defective supporting affidavit (not disclosing name of the deponent). Two; the Appellant assigning no good and sufficient grounds for the delay.

Infact by omitting name of the deponent as Mr. Kabuguzi readily concedes, there was no affidavit supporting the application. Much as also there was no affidavit at all. Nor were there any application. Nevertheless as long as nothing had been determined on merits, the purported application however defective might be, should have been struck out. Not dismissed. As Mr. Kabuguzi, correctly argued it. However whether the document was prepared for her by a lawyer is immaterial. Because parties are vicariously liable for mistakes done by their lawyers. In other words and this is trite law vagaries of own calendar/diary or advocate's negligence constitutes no sufficient ground of extension of time. Case ofExtreme age of a layman notwithstanding. As there has been no two sets of rules/law. One for the young and or non lay persons and another one for such other people. But also perhaps being aware of her weakness she engaged services of the Nola.

On the issue whether the reason of sickness was good and strong enough to ground extension of time, she may have fallen

sick yes! But one does prove that was w.e.f 20th April 2009 untill 9th February, 2010 bedridden. The affidavit supporting the application though mentions it, does not suggest any proof thereof. I think the standard of proof in application for extension of time needs not be of beyond reasonable doubts but it must be reasonably believed. There was no any medical chits. Nor one tell that for about a year the Appellant had remained attended by traditional healers who traditionally issue no medical chits. That one being the case, possibilities of one applying for extension of time by way of after thought could not be ruled out. The law of limitation intends to discourage endless litigations. As there can be no open ended period within which a subject to take necessary steps in a court of law. Without which abuse of the court process would be order of the day.

I will have no point upon which to fault the learned chair.
Appeal dismissed with costs. Here and at the tribunals below.

R/A explained.

S.M.RUMANYIKA

JUDGE

16/11/2014

Delivered under my hand and seal of the court in chambers. This
19/11/2014. In the presence of Mr. Kabuguzi for the appellant
and in the presence of respondent.

S.M.RUMANYIKA

JUDGE

19/11/2014