

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND APPEAL NO. 63 OF 2016

***(Original Misc. Application No. 46 of 2015 from Mkuranga District
Land and Housing Tribunal at Mkuranga)***

CHARLES MAHENGE.....APPELLANT

VERSUS

LUTAMULA DOTO NGIKA.....RESPONDENT

J U D G M E N T

9/5/2018 & 20/7/2018

MZUNA, J. :

This appeal has been preferred by **MR.CHARLES MAHENGE**. It is against a ruling of the District Land and Housing Tribunal for Mkuranga at Mkuranga which dismissed an application for extension of time to file appeal against the decision of Mgomba Ward Tribunal in Application No. 25 of 2015. **MR. LUTAMULA DOTO NGIKA** vehemently objected it.

tribunal ruled against his favour. He lodged an appeal but it was withdrawn upon noticing that it was filed out of time and without leave. He then filed the application for leave to file appeal out of time. The advanced reasons were that immediately after delivery of the judgment on 7th April 2015 he fell sick on 11/4/2015 as evidenced by the medical chits. That before he could recover, his father passed away at Imalilo Village, Njombe District so he had to travel to Njombe for burial ceremony.

The District Land and Housing Tribunal dismissed the applicant's application for the reasons that the tendered medical chit shows that he attended to Ikwiriri health center only once on 11/4/2015 and was given medication (tablets) for one week but there was no proof that he returned to the medical center or other hospital for further treatment. In other words, such illness was not continuous. As for the allegation that he travelled to attend the burial ceremony of his late further, it was found that the alleged safari did not rule out that he might have travelled to Njombe on other personal business.

Application No. 52 of 2001 (unreported) that was the only proof hence constituted sufficient cause for extending the time of filing an appeal to the District Land and Housing Tribunal.

Arguing on the second ground of appeal, Mr. Sang'udi submitted that there existed illegality which constitute good cause as observed in the case of **Ezron Magesa Maryogo vs. Kassim Mohamed Said and Another**, Civil Application No. 227 of 2015 CAT (unreported). Reference was made to the Land Application which was withdrawn leading to the application and then the present appeal.

In the circumstance, the learned counsel pressed the court to allow this appeal with costs.

It is a trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where "it has been sufficiently established that the delay was with sufficient cause"; See, the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, CAT at Dar es Salaam (unreported).

It was held in the case law of **Ezron Magesa Maryogo vs. Kassim Mohamed Said and Another** (supra) which quoted the decision in the case of **VIP Engineering Marketing Limited and 2 Others vs. Citibank Tanzania Limited**, Consolidated Reference No. 6,7 and 8 of 2016 (CAT) unreported that: -

"...A claim of illegality of the challenged decision constitute sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay."(underscoring mine).

The application was dismissed without due regard to the fact that there was an appeal which was withdrawn which amount to claim of illegality based on technicalities. That reason and the fact that the delay was not inordinate has prompted this court to allow this appeal. I would also agree with the holding in the case of **Martha Daniel v. Peter T. Nko** (supra). Mroso, J (as he then was) had the occasion to say that:-

"A plea by a lay person that he be allowed to file an appeal out of time in an appropriate court an appeal which was struck out or is voluntarily withdrawn from the High Court because it had

20/07/2018

Coram: Hon. N. R. Mwaseba DR

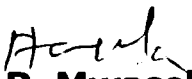
For appellant: Mr. Sang'udi for

For respondent: absent

MR. SANG'UDI: The case comes for judgment.

COURT: Judgment delivered on 20/07/2018 in the presence of the appellant and in the absence of the respondent.




N. R. Mwaseba
DEPUTY REGISTRAR
20/07/2018