

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 705 OF 2016**

**DORA MUHONI** (the legal representative of the late **LUCY MKWEMA**).....**APPLICANT**

***VERSUS***

**FINCA TANZANIA** .....**1<sup>ST</sup> RESPONDENT**  
**NOJA YOHANA** .....**2<sup>ND</sup> RESPONDENT**  
**MAJEMBE AUCTION MART**.....**3<sup>RD</sup> RESPONDENT**  
**JOHASHI YUDA**.....**4<sup>TH</sup> RESPONDENT**  
**KURWA BAKARI**.....**5<sup>TH</sup> RESPONDENT**

**R U L I N G**

*Date of last order:* 25/4/2018  
*Date of Ruling:* 24/8/2018

**MGONYA, J.**

The Application was brought under the Certificate of urgency which made under **Section 14 of the Law of Limitation Act Cap. 89 [R. E. 2002], Order XLIII (2), Section 95 of the CPC Cap. 33 [R. E. 2002]** and any other enabling provisions of the laws, for the following orders:-

- 1. That this Hon. Court be pleased to grant an order for extension of time so as the Applicant can be able to file an Appeal out of time;***
- 2. Costs of this Application be provided by the Respondents;***
- 3. Any other reliefs that this Hon. Court may deem fit just and equitable to grant.***

The Application is supported by an Affidavit of **LUCY MKWEMA**, the Applicant.

The Respondents (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup>) filed a Counter Affidavit bitterly challenging the Application.

The Applicant was represented by Mr. Kipeche learned Counsel whereas the Respondents (2<sup>nd</sup> and 5<sup>th</sup>) were represented themselves and the remain were represented by different Counsels.

In line with the above, this Court on 25/4/2018 ordered the Application be disposed by way of written submissions.

Supporting on the Application, the Applicant referred to her reasons for delay as well stated in her Affidavit in support of her Application; Hence the Applicant prayed to adopt the same to form part of her submission.

Submitting on behalf of the deceased Applicant, the legal representative to the late Lucy MKWEMA, one Dora Mhuni in her Written Submission explained the major reason for the failure to appeal within reasonable time.

Referring to the sworn Affidavit in support of the Application paragraph 6-9, Applicant pointed the reason which she named it as a good cause under the law to be the deceased Lucy MKWEMA'S sickness which prevented her to appeal within time. The said assertion is supported with some medical reports attached to the Application to that effect.

It is for that single reason the Applicant prayed the court to grant the order sought.

Upon responding to the Applicant's Written Submission, the 2<sup>nd</sup> and 4<sup>th</sup> Respondents did not oppose the Application as the issue of illness of the Applicant was well know and supported by the relevant document as stated under paragraph 7 of the Applicant's Affidavit.

In line with the above submission, the 2<sup>nd</sup> and 4<sup>th</sup> Respondent submitted that as the discretion is solely to this court to extend time or not, then this Court should act accordingly for the interest of justice.

On the other side, the 1<sup>st</sup> and 5<sup>th</sup> Respondents strongly opposed the Application on the ground that the Applicant was presented on the day when the Judgment was delivered on 15<sup>th</sup> April, 2016 and the Chairman further explaining the right to Appeal for the Applicant; but the Application was filed **24<sup>th</sup> August, 2016** almost (4) months later; claiming that she was sick. They further submitted that, from the medical reports and exhibits attached in applicant affidavit, the same shows that the Applicant started medication on 30<sup>th</sup> April, 2018 thus the whole period, the Applicant could have given instruction to her Advocate to proceed with instituting her appeal within time prescribed; as she was enjoying the services of learned Counsel Mr. Joseph Kipeche.

Further, the Applicant had an ample time of 15 days from when the Judgment was delivered to the date when she started medication, therefore the Applicant neglected those days to file her appeal in time.

In addition to the above submission, the 1<sup>st</sup> and 5<sup>th</sup> Respondents submitted that, the one who filed this Application before this Court was one **LUCY MKWEMA** who is now represented by one **DORA MUHONI (ADMINISTRATRIX)**. However, the name of LUCY MKWEMA differ from one which is appearing in all medical reports annexed to the affidavit which

shows the name **LUCY PATRICK MKWEMA**. Hence the report cannot support the Application before this court.

The above Respondents further submitted that the Applicant counsel cited three (3) unreported cases which he neglected to attach in his submission for reference purpose. Finally, the 1<sup>st</sup> and 5<sup>th</sup> Respondents prayed for the Application be dismissed with costs as the reason for extension of time provided does not hold water hence it has no merits.

On rejoinder, the Applicant submitted that the Appeal could not have been filed between 15/4/2016 to 29/8/2016 because the Judgment complained of was no yet prepared. Paragraph 4 of the Applicant's Affidavit shows that the Judgment was ready for collection on **29<sup>th</sup> April, 2016** and since the copies of the Judgment and Decree were mandatory documents for one to file an Appeal; Applicant couldn't meet the time.

The Applicant maintained that the delay in filing the Appeal within time was occasioned by sufficient cause and prayed for the Application to be granted.

Having gone through the parties submissions and pleadings thereto, the main issues before the court is whether sufficient reason have been adduced to warrant this Court to exercise its discretionary powers to grant the Application.

It is on the record that the Applicant's reason for delay to file an Appeal in time was due to illness. Records further reveals that the Applicant was sick and had several health problems during the trial which at the end lead to her death.

The records further shows that the Judgment intended for appeal was delivered on **15/4/2016** and the Application at hand was filed on **24/8/2016**, which is almost 4 months after the Judgment was delivered.

It is my firm view that, the late Lucy Mkwema's sickness which led to her death, was and still the sufficient reason for further proceeding with any legal action after the said Judgment. **The seriousness to her sickness is proved by her death.** What more proof is needed under the circumstances? From the trend of her sickness as clearly indicated in her Affidavit supporting this Application; the reason adduced is more than a sufficient cause. It goes without say, in this respect.

Again on the issue of different names as stated by the respondents that the one who filed the Application before this Court was **LUCY MKWEMA** who is now represented by one **DORA MUHONI (ADMINISTRATRIX)**. However, it is said that the name of **LUCY MKWEMA** differs from the one which is

appearing in all medical reports annexed to the affidavit which bears the name of **LUCY PATRICK MKWEMA**.

I am in the settled mind that **LUCY MKWEMA** and **LUCY PATRICK MKWEMA** is one and the same person as stated by the 2<sup>nd</sup> and the 4<sup>th</sup> Respondents who cleared this doubt. The court record show that the Late Applicant was the 2<sup>nd</sup> Respondent's wife who confirmed that the Late Lucy had number of health problems which at end led to her death. This objection is meritless.

From the above submissions and for the interest of justice, **the Application is accordingly granted as prayed**, the Applicant is ordered to file her appeal within **fourteen days (14)** from the date of this ruling. No order as to costs.

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**31/8/2018**

**COURT:** Ruling delivered before Hon. S. Ding'oi, Deputy Registrar in the presence of Advocate Mariam Mtalitinya, for Applicant, Advocate Fabiola Harrison for 1<sup>st</sup> and 5<sup>th</sup> Respondents, 2<sup>nd</sup> and 4<sup>th</sup> Respondents (presence in person) and Ms. Monica RMA on 24<sup>th</sup> day of August, 2018 in chamber No. 18.



**L. E. MGONYA**

**JUDGE**

**24/8/2018**