

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

**MISC. LAND CASE APPLICATION NO. 293 OF 2019**

*(Originating from Land Appeal No. 38 of 2017, decided by the District Land  
and Housing Tribunal for Mkuranga District)*

**GEORGE BARABARA.....APPLICANT**

**VERSUS**

**ARISTIDES D LITAKA.....RESPONDENT**

**RULING**

**OPIYO, J.**

In the Ward Tribunal of Tambani Ward in the District of Mkuranga, the respondent, Aristides D Litaka successfully sued the applicant herein George Barabara over a piece of land. The applicant was ordered by the Ward Tribunal to vacate the land immediately and hand over the same to the respondent. The respondent then appealed to the District Land and Housing Tribunal for Mkuranga District. He did not succeed. Now he is in this court seeking for an extension of time to file his appeal against the decision of the District Land and Housing Tribunal for Mkuranga District.

The application was brought under section 38 (1) of the Land Disputes Courts Act, Cap 216 R.E 2002, accompanied by the affidavit of the applicant

George Barabara. The respondent on the other hand filed a counter affidavit, opposing the application at hand.

Hearing of the instant application was by a way of written submissions, Catherine A Lyasenga appeared for the applicant while the respondent appeared in person. Submitting for the applicant, Advocate Lyasenga insisted that, the applicant fell sick immediately after the appeal decision of the District Land and Housing Tribunal for Mkuranga was delivered on 3<sup>rd</sup> October. He was suffering from blood pressure for more than five months which caused a blurred vision on him. He was then admitted at Muheza Hospital and underwent a minor surgery. Therefore his sickness is the reason for delay and constitutes a good cause. Unfortunately the applicant did not have any proof of the medical chits as they were stolen after he was mobbed on his way home from Muheza. The applicant reported the matter to the police station and was given a loss report. Advocate Lyasenga went on to cite the case of **Ngao G. Losero versus Julius Mwarabu, Civil Application No. 10 of 2015, Court of Appeal of Tanzania at Arusha (unreported)** where the court cited with approval the case of Mbogo versus Shaha (1969), EA to substantiate her argument. The gist of the holding was that all relevant factors including length of the delay, the reason for the delay, whether there is an arguable case on appeal and the degree of prejudice to the defendant if time extended must be taken into account in deciding how to exercise the discretion to extend time.

Advocate Lyasenga went on to argue that, the decision of the Ward Tribunal contains illegalities which are to be corrected on appeal. Further that, on balance of probabilities, the applicant will suffer more (irreparable loss) than

the respondent if extension is denied. The counsel also argued that, owing to the age of the applicant which is 81 years, he is prone to a number of health issues that restrains his promptness in taking some important actions, including appealing in current matter.

The counsel for the applicant concluded that, the powers to extend time is a discretionary power which need to be exercised judiciary where there is a good and sufficient cause advanced by the applicant as was observed in the case of **Sanyou Services Ltd versus BP Tanzania Ltd (Now Puma Energy (T) Ltd), Civil Application No. 185/17 of 2018, CA, DSM (unreported)**, at page 10.

Replying to the applicants' submissions, the respondent argued that, the applicant did not advance any good or sufficient cause warranting an extension of time. The applicant had failed to account for each day of delay from March to May 2019 as required by the law. Therefore, the court should not use its discretion in favour of the applicant. Above all, on balance of probabilities, if the time is extended the respondent is more likely to be prejudiced than the applicant. His submissions were substantiated by the case of **Ezron Mageza Maryongo versus Kassim Mohamed Said and Ibrahim Mwankyuse, Civil Application No. 227 of 2015**, where **Mugasha JA** quoted with approval the decision of **Lord Guest in Batma versus Cumarasamy and Another (1964) 3 All ER 933** and held that:-

*"The rules of Court must, prima facie be obeyed and in order to justify a court extending the time during which some steps in procedure required to be taken, there must be some material on which can exercise it discretion. If the law were otherwise, a party in breach*

*would have an unqualified right to an extension of time which would defeat the purposes of the rules which is to provide timetable for litigation.”*

It is the submission of the counsel for the applicant in her rejoinder that, the argument by the respondent is misconceived as it is the respondent who instituted the application at the Ward tribunal and not the applicant. The rest was a reiteration of her submissions in chief.

From the respective submissions of both parties, it is not disputed that the material issue for determination is whether the applicant has demonstrated a good cause to warrant the court to exercise its discretion and enlarge the time for appeal in favour of the applicant. The reasons advanced by the applicant for delay to appeal against the decision of the District Land and Housing tribunal are that, the applicant was sick, suffering from blood pressure for more than five months which caused him a blurred vision. He was admitted at Muheza Hospital and underwent a minor surgery. The applicant did not have any proof of his sickness as his medical certificates were stolen when he was robbed at Mbagala. In lieu of the medical certificates, the applicant provided a Police loss report. To the respondent this was seen to be not a good cause and above all a failure by the applicant to account for his delay.

It is commonly agreed that, what constitutes good cause cannot be laid down by any hard and fast rules, rather a good cause is a relative term and is dependent upon the circumstances of each individual case (See **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors Ltd CAT Civil Application No. 13 of 2010 (Mwanza Registry, unreported)**). In this

case the relevant material provided by the applicant in order to move the court to exercise its discretion is that he was sick and his medical certificates were stolen, which he proved by production of loss report. In my considered view, the loss report, in this particular case is a relevant material that is sufficient enough to make this court believe the applicant's assertion on his sickness. In this case, the inherent slowness in action resulting from old age itself is an added ground to consider in few months of delay in in taking necessary step. Based on these circumstances, I am of the view that the applicant has provided a good cause sufficient to enable the court allow this application. Considering the length of delay about six months, reasons for delay sickness, the degree of prejudice, that the respondent will not suffer any noticeable loss in case this application is allowed and above all the right of an applicant to be heard in his course, I think it is just to grant this application. I therefore dwell on the decision of court given in **Ngao G. Losero versus Julius Mwarabu, Civil Application No. 10 of 2015, Court of Appeal of Tanzania at Arusha (unreported) supra**, and use my discretion judiciously for the interest of justice for both parties.

In the upshot, this application is allowed. The intended appeal be filed within 14 days from the date of this order. Each party to bear his costs.



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**M. P. OPIYO,  
JUDGE  
24/3/2020**