

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LAND DIVISION**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 38 OF 2018

*(From the decision of the High Court in Land Appeal No. 164 of 2016, originating from
the District Land and Housing Tribunal for Morogoro at Morogoro in
Application No. 19 of 2014)*

YUSTINA LEMI..... APPLICANT

VERSUS

LEAH JOHN..... 1ST RESPONDENTS

THECLA PETER..... 2ND RESPONDENTS

JIONSIA JOHN..... 3RD RESPONDENTS

RULING

S.M. MAGHIMBI, J

On 25th January 2018 the Applicants filed this application seeking for, among other things, an order for extension of time to allow the applicant to seek leave to appeal to the Court of appeal against the decision of this court in Land Appeal No.164 of 2014 dated 25th October, 2017. The application is brought under Section 11(1) of the Appellate jurisdiction Act, Cap 141 R.E, 2002 and Section 14(1) of the Law of Limitation Act (cap 89 R.E 2002). The application was supported by an affidavit of the Applicant dated 23rd January 2018.

On the 23/09/2019, the court ordered that the application be disposed by way of written submission. The applicant's submissions were drawn and

filled by the Applicant herself while the respondent's submissions were drawn and filed by Leah John, 1st Respondent.

The applicant's main reason for her delay is found in paragraph four of her affidavit, that on the Judgment day she was seriously sick and was hospitalized. She attached as annexures to her affidavit a couple of hospital documentation. In her submission, she submitted that considering the critical situation, the court had the duty to notify the Applicant to collect the copy of judgment after delivery of judgment. She supported her submission by citing the decision of the Court of Appeal sitting at Dar-es-salaam in the case of **Tanzania China Friendship Textile Co. Ltd V Charles Kabweza & Others, Misc. Civil Application No. 62/2015** (Unreported).

In their joint reply, the Respondents submitted that the applicant has failed to show sufficient cause so as to convince this court as she has failed to account for each day if she was at the hospital. They argued that the attached documents referred to Justina Mg'ande who is not party to this application and they are dated 17/10/2017 which is not the Day of Judgment. Further that the document show that the patient was treated at the Out Patient Department meaning that she was not hospitalized. They also submitted that the applicant has no chance of success in the Court of Appeal and prayed that the application is dismissed with costs.

In rejoinder the applicant, apart from reiterating what she submitted in submission in chief, she submitted further that her sickness is recurrent one as she has suffered hypertension leading to stroke. That she was admitted and until now she is still sick. To support her submissions, she cited the case OF **Emmanuel Maira V. The District Executive Director**

Bunda District Council, Civil Application No. 66 of 2010

(Unreported) where it was held that:

"....health matters, in most cases, are not the choice of human being, cannot be shelved and nor can anyone be held to blame when they strike..."

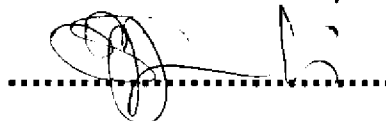
Having gone through the records of this application and having considered the parties submissions therein, the following are the court's observations. It is clear that the only reason for the delay advanced by the applicant is that on the Judgment day she was seriously sick and was hospitalized. To counter the said reason, the Respondents argued that the documents refer to the name Justina Mng'ande while the applicant is Yustina Lemi as per the court file. The applicant did not state anything in rejoinder about the said defect while it was her chance in rejoinder to clarify this matter. Indeed the annexures to the affidavit bear the name of Justina Mng'ande and not Yusta Lemi, let alone the fact that the documents do not reveal any admission of the patient. Since the allegation of sickness has not been supported by any documents which bear the name of the applicant, the applicant has failed to prove her sickness as the reason for the delay. Hence with respect, the cited case of **Emmanuel Maira** (Supra) is not applicable in this case.

The Court of Appeal, in its decision in the case of **Alliance Insurance Corporation Ltd Vs Arusha Art Ltd, Civil Application No. 33 of 2015**,(unreported) emphasized that:

"Extension of time is a matter for discretion of the court and that, the applicant must put material before the court which will persuade it to exercise its discretion in favor of an extension of time".

Since sickness being the only reasons the applicant for the delay, and the applicant having failed to prove it by documentation, the conclusion is that the applicant failed to put strong material substance to convince this court to use its discretion to extend time. Consequently, the application is hereby dismissed with no orders as to costs.

Dated at Dar es Salaam this 24th Day of February 2020.



.....

S.M MAGHIMBI
JUDGE