

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 12 OF 2020

(Originating from the Decision of the District Land and Housing Tribunal for
Ilala District at Mwalimu House in Land Application No. 238 of 2008)

MWANA MOHAMED APPLICANT

VERSUS

ILALA MUNICIPAL COUNCIL RESPONDENT

RULING

Date of Last Order: 08/02/2021 &
Date of Ruling: 19/02/2021

S.M KALUNDE, J:-

In this application, the applicant, **MWANA MOHAMED**, who is allegedly more than 90 years old, is seeking for leave to appeal against the decision of the of the District Land and Housing Tribunal for Ilala District at Mwalimu House ("**the tribunal**") in **Land Application No. 238 of 2008**. The application is preferred under section **41 (2)** of **the Land Disputes Court Act, Cap. 216 R.E 2019 ("the LDCA")**. In support of the application, the applicant filed an affidavit.

In accordance with the affidavit and annexures, the decision of the tribunal was delivered on 24th December, 2018. Subsequently, on 04th January, 2019 the applicant filed a notice of

intention to appeal and a letter requesting for copies of judgement and decree of the Court. On 12th April, 2019 copies of judgement and decree were supplied. On being supplied with the same, the applicant allegedly got an accident and fell sick, thus, she could not follow-up on her appeal. Upon recovery, on 10th January, 2020, she filed the present application.

On their part, the respondent filed a counter affidavit denying the applicant's averments in the affidavit. They alleged that throughout the trial at the tribunal the applicant was being represented by an advocate; thus, other than laxity, her poor health would not have been the reason for the delay. The respondent prayed that the application be dismissed with costs.

Hearing of the application was through written submissions. **Mr. Kasanda Mitungo**, learned advocate, drew and filed submissions for the applicant, whilst the respondent's submission were drawn and filed by **Ms. Judith Nason**, learned Municipal Solicitor.

In support of the application Mr. Kasanda argued that delay in filing the appeal was occasioned, partly, by delay in being supplied with copies of judgment and decree of the tribunal and to a large extent by the medical condition of the applicant. To support his argument he cited the decision of **Jehangir Aziz Abdulrasul vs. Balози Ibrahim Abubakar Bibi Sophia Ibrahim**, Civil Application No. 79 of 2016 (CAT-DSM) (unreported) and **Luka Kaziyabure vs**

Raha Bakari & Another (Misc. Land Case Appl. No.226 of 2019) [2019] TZHCLandD 19; (23 September 2019 TANZLII). In **Jehangir Aziz Abdulrasul** (supra) the Court of Appeal held that:

"According to the medical records attached to the applicant's affidavit, the applicant was hospitalized at Aghakhan Hospital between January 10 and January 16, 2016 before traveling out of the country for medical treatment. The illness of the applicant is sufficient to constitute good cause."

Mr. Kasanda went on to argued that the decision of the tribunal was marred with irregulates inviting this Court to look into for purposes of meeting the ends of justice. According to him, the alleged irregularity related to the failure by the tribunal to consider the outcome of the visit to the *locus in quo* and failure by the tribunal to reconvene and invite parties to comment on the site visit notes. To justify his argument he cited the case of **Nizzar M.H Ladak vs. Gulamali Fazal Jan Mohamed** [1980] TLR 29. It was Mr. Kasanda's argument that the above arguments were sufficient to demonstrate that the applicant had good cause for the delay.

In response, Ms. Nason, argued that the applicants have failed to demonstrate that there was "**good cause**" to condone the delay. She said that the applicant have failed to attach any medical chits to prove that she was in fact sick and was attending medical treatment. In addition to that she argued that since the applicant was being represented by an advocate at the tribunal, the advocate

should have filed the appeal in time. In addition to that she argued that the applicants have failed to provide a detailed account of each day of the delay. In support of this position she cited the decision of the Court of Appeal in the case of **TAMICO (KMCL) on behalf of Enoch Joseph & 113 Others vs. Bulyanhulu Gold Mines Limited**, Civil Application No. 361 of 2017 and **Dar es Salaam City Council vs. S. Group Security Co. LTD**, Civil Application No. 234 of 2015. In conclusion she prayed that the application be dismissed with costs.

In rejoinder, Mr. Kasanda insisted that the respondent acknowledged the impact of the irregularities and thus failed to respond on the same. He insisted that upon obtaining the copies of judgment the applicant fell sick and obtained medical treatment until when she met the present advocate who then perused this application. He maintained that the application has merits and thus should be granted.

Having gone through the pleading and rival submissions submitted by the parties, I gather that the question for my determination is whether the application is merited. A good point to start in responding to that question is section 41. (2) of the LDCA. The section reads:

*"41.- (2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: Provided that, the High Court may, **for the good cause,** extend the time for filing an appeal either before or after*

the expiration of such period of forty five days.” [Emphasis Mine]

In accordance with the section the time limit to file an appeal is 45 days unless an extension is granted upon demonstration of a **“good cause”**. The question now is whether the applicant have been able to demonstrate that the delay in filing the appeal was occasioned by **“good cause”**.

Admittedly, there is unbroken chain of authorities to the effect that sickness is a good or sufficient cause for extension of time. One of those decisions is **Jehangir Aziz Abdulrasul** (supra). It is also true that, there are circumstances where courts have applicants to produce medical chits proving that he/she was in fact hospitalized. I am also aware that each case has to be determined on its own merits regard being to its circumstances. The requirement to have medical reports is really not a statutory requirement, all that the applicant is required to do is to provide sufficient facts or evidence of their sickness, depending on circumstances an affidavit may do just that. To this end, I am persuaded by the decision of the High Court of Uganda in **Kibuuka vs. Uganda Catholic Lawyers Society & 2 Others** (MISC. APPLICATION NO.696 OF 2018) [2019] UGHCCD 72 (11 April 2019)

“A party could have been feeling unwell and opted to rest and or took simple medication to feel better. It is not a requirement of the law that whenever a person is ill he/she must produce medical documents in proof of sickness or illness... Under

Order 19 rule 3 of the Civil Procedure Rules, in applications like the present one an affidavit may contain evidence of this nature to prove sickness/illness.” [Emphasis Mine]

In the affidavit filed in support of the present application, the applicant stated that, the delay in filing the appeal was occasioned by delay in obtaining copies of decision sought to be appeal against. When she obtained the copy she had an accident that resulted into a dislocated shoulder. To support her argument she appended a letter from Temeke Regional Referral Hospital. In accordance with the alleged report, the applicant was attending medical clinic at the hospitals’ Centre for a dislocated left shoulder and Hypertension.

Ms. Nason said that papers attached to the applicant’s affidavit were not medical chits properly so called, she thus concluded that the applicant have failed to attach proper medical chits to prove that she was in fact sick and was attending medical treatment. At this juncture I think it is worth noting that, I have never come across a standard form or manner for filling medical reports. In essence not all medical records are intended to be used in Court. The legal threshold is that, there ought to be some kind of explanation or material to enable the Court to exercise the discretion. See **Kalunga and Co. Advocates v National Bank of Commerce Ltd.** (124 of 2005) [2006] TZCA 87; (24 April 2006). In my view, that threshold has been met.

Whilst to another person, the report may sound insufficient, but to a person who was actually sick, a report is just a piece of paper purporting to state what she actually felt. The actual feeling is with the sick person. It is therefore, difficult for another person to judge whether the alleged sickness was so serious sufficient to preclude the applicant from filing the appeal or comply with respective legal requirement. If the said medical chit, supported by the applicant's affidavit, demonstrates that the applicant suffered some form of disease or illness, then the Court should consider the same. This view seem to be supported by the Court of Appeal decision in **John David Kashekya vs. The Attorney General**, Civil Application No. 1 of 2012 (Unreported-CAT), where the Court had this to say about sickness:

"... sickness is a condition which is experienced by the person who is sick. It is not a shared experience. Except for children who are not yet in a position to express their feelings, it is the sick person who can express his/her condition whether he/she has strength to move, work and do whatever kind of work he is required to do. In this regard it is the applicant who says he was sick and he produced medical chits to show that he reported to a doctor for checkup for one year. There is no evidence from the respondent to show that after that period, his condition immediately became better and he was able to come to Court and pursue his case. Under such circumstances, I do not see reasons for doubting his health condition. I find the reason of sickness given by the applicant to be sufficient

reason for granting the application for extension of time...”

In the present application, the applicant is an old woman, she argued that she was sick and presented a letter from Temeke Regional Referral Hospital. The report show that she was attending medical clinic at the hospitals’ Centre for a dislocated left shoulder and Hypertension. Her argument is that, due to her health challenge she failed to make follow-ups that would allow her to file the appeal on time. Her argument is that, when she recovered she managed to file the present application. Nothing has been offered or argued to ascribe elements of negligence, laxity or sloppiness on the applicants’ part. Given her age, I do see any reason to doubt that, it was sickness that delayed her from filing the appeal.

In light of the above discussion, I find that, the applicant has been able to advance “**good cause**” for this Court to exercise its discretion in extending time. Consequently, the application is granted without costs. The applicant is to file her appeal within 30 days of obtaining certified copies of this decision. It is so ordered.

DATED at DAR ES SALAAM this 19th day of FEBRUARY, 2021.



S.M. KALUNDE
JUDGE