

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

MISC. LAND APPLICATION NO. 317 OF 2020

(From the Judgement and Decree of Kilombero District Land and Housing Tribunal of Ifakara at Ifakara, Land Appeal No. 4 of 2014, Original land Case No. 59 of 2017-Mtimbila Ward Tribunal)

HUSSEIN TALOOAPPLICANT

VERSUS

KANDEGE MENLADI KANDEGE.....RESPONDENT

Date of last Order:25/06/2021

Date of Ruling: 02/07/2021

R U L I N G

MWENDA, J;

The Applicant have under Section 38(1) of the Land Disputes Courts Act, 2002(sic) preferred this Application seeking extension of time to lodge his Appeal to this Honorable Court. His Application is supported by an Affidavit which during hearing he prayed to be considered as part of his submissions.

The Applicant is represented by Tanganyika Law Society through legal aid scheme while the Respondent appeared in person.

During hearing of this application Mr. Silayo, Learned Advocate for the applicant adopted the contents of the Affidavit by submitting that the Applicant and respondents were rivals in Land Appeal No. 4 of 2018 at Kilombero District Land and Housing Tribunal. On 07/03/2019 the Judgment

was pronounced in the Respondent's favor. Immediately thereafter, that is on the 14/03/2014 (sic) the applicant applied for copies of proceedings, judgments and decree for appeal purposes. However before lodging his Appeal he was succumbed to demons which befell him on 02/04/2019 and persisted for about four months. During all that time, he was undergoing spiritual therapies from various men of God who later on managed to cure him. The learned counsel further submitted that by the time he recovered he was already time barred and as such he is now seeking extension of time to lodge his Appeal out of time.

The Respondent did not have much to say but he prayed to this Court to consider the contents of his counter affidavit in opposing this application.

In this matter the issue is whether, the Applicant have advanced sufficient reasons to warrant grant of extension of time.

The applicant through his advocate have advanced reasons for delay as being due to him succumbing to demons. He alleged that he was then subjected to spiritual therapies from various men of God. When he recovered in mid-September 2019, he was already time barred.

This Court have considered reasons for delay and find that it insufficient to support his allegations. This court is of the view that his allegations ought to be supported by independent evidence in that if the he was suffering from a decease of mind those capable of testifying in respect of him are the ones who attended him. These witnessed would be in a position to tell if he was suffering from decease of mind, when did it start and when did it end. Failure of the applicant to submit affidavit from the alleged Men of God or anybody who attended him to support his grounds

make his reasons advanced insufficient and as a result this court puts no weight on them in determining this application.

This court however went through the Applicant's affidavit and came across paragraph 6 which suggest grounds of Appeal. These grounds reads:-

- i. The two lay members who delivered the trial tribunal's judgment did not take part in the trial of the matter contrary to law;
- ii. The trial Tribunal's judgment falls short of signature of one member purported to have decided it;
- iii. The Respondent herein who was a complainant at the trial claimed ownership of the suit land in his capacity as administrator of the deceased estate, armed with letter of Administrator of the deceased estate he got in 2015 after 43 years of the death of the deceased in 1976 contrary to law;

By looking at these reasons for appeal it is clear that there are legal issues to be determined by this court if leave is granted as the Applicant is alleging illegality on the decision of the District Land and Housing Tribunal for Kilombero in Land Appeal No. 4 of 2018.

In the case of ***Attorney General Vs. Tanzania Ports Authority and Another, Civil Application No. 87 of 2016*** it was held as follows:-


"Moreover, it is settled law that a claim of illegality of the challenged decision constituted sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the Applicant under the rule to account for delay." [Emphasis added]

From the foregoing reasons it is clear that illegalities advanced by the Applicant are sufficient reasons to grant extension of time, that being the case therefore this application is granted.

The Applicant is to file his Appeal within 21 days from the date of receipts of this Court's record. Each party shall bear their own costs.

It is so ordered.




A. Y. MWENDA
JUDGE
02/07/2021