

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 9 OF 2019

(C/O Mpanda DLHT Misc. Application No. 11 of 2017, Originating from
Shauri la Madai No. 38/2015 Sibwesa Ward)

EPHRAHIM NKUNGWE APPLICANT

VERSUS

OSWARD TINGO RESPONDENT

RULING

Date: 28 & 30/07/2021

Nkwabi, J.:

The applicant is seeking leave of this court to appeal out of time. He is also seeking the indulgency of this court to award him any reliefs this court may deem just and equitable to grant. The application has been preferred under section 38(1) of the Land Courts, (Land disputes settlements) Act 2002 together with any other enabling provisions of the law.

In his supporting affidavit, the applicant averred that he was aggrieved with the decision in Misc. Application No. 11/2017 but could not appeal as



he was sick (my health was unstable from 20th March 2018 experiencing serious spinal cord pain and hence underwent traditional herbalist treatment for the whole of 2018 and particularly on 2/06/2015 where he went for hospital checkup). He proceeded with herbal treatment and he regained health by 15th may 2019. That due to health problem he could not pursue his appeal on time and the chances of succeeding the appeal has overwhelming chances if he is allowed to appeal out of time. The decision/ruling in this application was delivered on 13/02/2018.

In his submission, the applicant insisted that at the time the decision was given he was sick hence the matter proceeded ex-parte He was suffering from back pain.

The respondent resisted the application by filing a counter-affidavit duly sworn by himself, averring that the applicant has failed to prove his allegations due to failure to prove his illness by medical chit. In submission, the respondent argued that the applicant is troublesome and does not accept decisions of courts. He prayed the application be dismissed



The affidavits of both parties and the submissions of both parties, boil to the following issues:

1. Whether the applicant has accounted for every day of the delay.
2. Whether the applicant has managed to establish that there is illegality in the decision of the Ward tribunal he intends to challenge in the application for revision/appeal.
3. Whether the applicant has assigned good cause for this court to grant extension of time within which to appeal out of time.

I will start discussing the 1st issue which is whether the applicant has accounted for each day of the delay. The ruling that was delivered by the District Land and Housing Tribunal dated 13th day of February, 2018 in Application No. 11/2017 was in respect of the applicant's application for extension of time to file an application for revision of the judgment of Sibwesa Ward Tribunal madai no 38/2015. ... the applicant submitted that he filed an application for extension of time because of the illegality. This application has no grounds of extension of time that is the applicant did not submit why he delayed to file the application.

On the 1st page of the submission by the applicant's counsel on the 1st page went as follows:

Your lordship, the grounds for extension of time are stated in paragraphs 6 and 7 of the applicant's affidavit which in essence is illegality allegations on the decision subject to this revision, to the effect that there is existence of the judgment of Mpanda Primary Court dated 24.06.2014 and that of Sibwesa Ward Tribunal of 2015 in land dispute no 38 of 2015 between the same parties. In the premises herein therefore the decision of ward tribunal is res judicata hence illegal decision in the eyes of the law.

As if that is not enough, paragraph 6 of the affidavit in support in the application in the District Land and Housing Tribunal went:

That, though the application was not filed within statutory time but intervention of this honourable court is necessary to cure the illegality of the two decisions afore stated and put the record clear.



It is clear therefore that in the District Land and Housing Tribunal for Mpanda District, the alleged sickness and sick sheet did not feature anywhere, so it is an afterthought after failing to convince the learned District Land and Housing Tribunal chairman. It is trite law that one has to account for each day of the delay, See **Civil Application No. 218 of 2016 Interchik Company Limited v Mwaitenda Ahobokile Michael** (unreported) delivered by Hon. Ndika, Justice of Appeal, where he had these to say at page 12:

It is this Court's firmly entrenched position that any applicant seeking extension of time under Rule 10 of the Rules is required to account for each day of delay.

In the present application, the applicant has failed to account for each day of the delay, because the explanation that he was sick did not feature in the application he lodged in the District Land and Housing Tribunal for Mpanda District which was dismissed for lack of merits in the sense that the alleged illegality that would be sought to be remedied (two conflicting decisions of the primary court and that of the ward tribunal) the claim was found to have no merits and in my view, rightly so as those were two



decisions by different courts, each ought to be challenged in its very criminal or civil court (Land courts system).

I think, it is due to lack of supporting evidence that is why the applicant is alleging to be delayed by sickness which he alleges was treated at traditional healers' homes and even the medical sheet which he brought, does not bear him that he was serious sick to make him fail to make an application in time. The first issue, therefore, must be answered in the negative.

Next, I discuss the 2nd issue which is whether the applicant has managed to establish that there is illegality in the decision of the Ward Tribunal he intends to challenge by application revision/appeal.

It is trite law that the main relief the applicant is seeking (extension of time to file an application out of time) is discretionary. It is in court's fully discretion to grant or refuse the same. In order this court base its discretion, then applicant has to supply the court with the necessary material upon which the court will use its discretion. See **Regional**

6 

Manager TANROAD Kagera v Ruaha Concrete Co. Ltd, CAT Civil application No. 96 of 2007, at DSM (Unreported):

"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."

I have shown above, the illegality alleged was rejected by Mpanda District Land and Housing Tribunal and the applicant has failed to establish it in this court hence the applicant has failed to establish any illegality which would make this court use its discretionary power and enlarge time within which the applicant would lodge the application to lodge an appeal out of time. The 2nd issue must be answered in the negative.

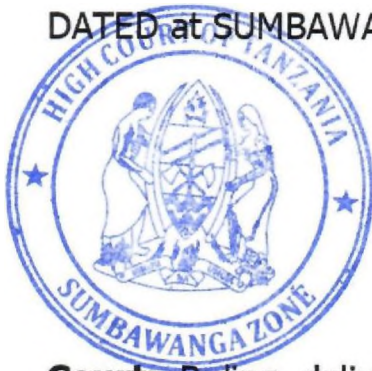
Neither good cause has been assigned by the applicant for this court to grant extension of time within which to file an application to challenge



decision of the Ward tribunal. No material has been advanced to this court for that matter and hence, it is difficult for me to decide that sufficient cause has been established. The 3rd issue has to be answered in the negative. Consequently, the application is dismissed with costs.

It is so ordered.

DATED at SUMBAWANGA this 30th day of July, 2021




J. F. Nkwabi,

JUDGE

Court: Ruling delivered in chambers this 30th day of July 2021 in the presence of the applicant in person but in the absence of the Respondent.




J.F. Nkwabi

JUDGE