

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

**MISC. LAND CASE APPLICATION NO.335 OF 2020**

*(Arising from the Judgment and Decree of Land Application No. 315 of 2015, dated 14<sup>th</sup> February, 2015, before Hon. R.I Chenya, Chairman of the District Land and Housing Tribunal for Temeke)*

**ZAINAB JUMA ALLY** (Administratrix of the Estate of the late Mohamed Ng'adu.....**APPLICANT**

**VERSUS**

**FAKI ALLY MALENGO.....1<sup>ST</sup> RESPONDENT**

**FATUMA MAKAME KONDO.....2<sup>ND</sup> RESPONDENT**

**ASHA MBARUKU.....3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of Last Order:14.06.2021*

*Date of Ruling: 27.07.2021*

**OPIYO, J.**

This application was brought under sections 41 (2) of the Land Disputes Courts Act, Cap 216, R.E 2019. The applicant above in is seeking to extend time for her to apply for an appeal against the judgment and orders made in the Land Application No. 315 of 2015, by the Temeke District Land and Housing Tribunal on the 14<sup>th</sup> February 2020. She also prayed for costs of the application to be provided for and any other relief this court will think

fit to grant. The application was accompanied by the affidavit of the applicant herself, Zainab Juma Ally. In this application, the applicant was being represented by Venance Victor, learned Advocate.

On the other hand, the respondents who enjoyed the legal services of the learned Advocate Taslima, filed their joint counter affidavit opposing the instant application. Hence the same went into hearing through written submissions.

Mr. Venance Victor, after praying for the applicant's affidavit to be adopted, insisted that the applicant delayed to file her intended appeal due to persistence illness. The applicant fell sick and collapsed on the day when the judgment was delivered, that was on the 14<sup>th</sup> of February 2020 and the sicknesses continued to exist throughout the period when she was supposed to file her intended appeal. She was therefore subjected to regular attendance to a clinic at Vijibweni Government Hospital as shown by **annexure ZJA-1**, annexed on the affidavit in support of her application. Mr. Victor insisted that, in search of care at the time of her illness, the applicant was taken to her relatives in Zanzibar and unfortunately while in Zanzibar, she contacted the Covid 19 disease which hindered much her ability to pursue her intended appeal within time. At the time she recovered, 45 days to file her intended appeal had already lapsed. Hence, she filed the application at hand as she has sufficient reasons for her delay, that is illness, as stated in **Tanga Cement Company versus Jumanne D Massanga and Amos A. Mwalwanda, Civil Application No. 6 of 2001**. The applicant's counsel maintained

also that; the applicant has accounted for her delay by giving out a sufficient cause therefore her application should be allowed.

In reply, Mr. Taslima for the respondents was of the view that, the applicant has failed to provide a sufficient cause for the delay as she didn't say exactly for how long she was sick. She failed to account for each day of her delay and therefore her application should be dismissed. The respondent counsel cited the case of **Exim Bank (T)Limited versus Jacqline A. Kweka, Civil Application No. 348/18 of 2020, Court of Appeal of Tanzania, (unreported)**, where it was stated that...

*"It is settled that the applicant who seeks enlargement of time to do an act authorized by the law after the prescribed time has expired has to account for each day of delay, there is an unbroken chain of , authorities to that effect."*

In rejoinder the applicant's counsel just reiterated his submissions in Chief.

Having gone through the submissions of the parties as well as the affidavit in support and counter affidavit against the application at hand, the issue for determination is whether the applicant has advanced good cause for her delay. For the applicant to succeed in this application, she is supposed to satisfy this court that, she had a sufficient reason that caused her to delay in pursuing her intended cause, **see OSWALD MASATU MWIZARUBI versus TANZANIA FISH PROCESSORS LTD CAT Civil Application No. 13 of 2010 (Mwanza Registry, (unreported))**. In

the instant application, the applicant has stated that, sickness is the main reason which prevented her from pursuing her intended appeal. I have perused the file trying to find out any evidence showing that the applicant was sick and attending to a particular hospital regularly as stated in her submissions in support of the application. Unfortunately, I have failed to locate single evidence, proving that she was really sick and had attended to a hospital regularly. Even the stated **annexure ZJA-1** is not where to be seen in the case file. In other words, the assertion by the applicant that, she was sick remained a mere statement, unsupported by any evidence which this court cannot easily act upon. Hence, I have to agree with the respondents' counsel that the applicant has not provided any sufficient cause and also failed to account for each day of delay as already settled.

For the reasons, the application is dismissed for lack of merits. I make no order as to costs.



A handwritten signature in blue ink, appearing to read "M. P. Opiyo".

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**M. P. OPIYO,  
JUDGE  
27/7/2021**