

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO. 85 OF 2021

(Arising from Misc. Land Case Appeal No. 157 of 2017 of the High Court Land Division)

RUKIA RAMADHANI DUNGU.....APPLICANT

VERSUS

ALLY SAID MAYEWA.....RESPONDENT

RULING

27/05/2021 & 12/07/2021

Masoud, J.

The main question which arises for my determination in this application concerns the existence of reasonable or sufficient cause for extension of time within which to apply for review. Specifically, whether the applicant has in the present application shown any reasonable or sufficient cause for the extension of time to file application for review in this court.

According to the affidavit in support of the application, and the submissions made on the applicant's behalf, it is clear that the applicant is aggrieved by the decision of this court in Misc. Land Case Appeal No. 157 of 2017. The decision was given by Hon. Mallaba J. (as he then was)

way back on 14/06/2019. The present application was filed in this court on 22/02/2021. A total of 31 months had already elapsed when the present application was filed.

The affidavit in support of the application disclosed the background that gave rise to the present application. In so doing, the applicant mentioned the matter which was determined against her by Hon. Mallaba J., in which she was the appellant. She further made reference to Misc. Land Application No. 172 of 2016 of the District Land and Housing Tribunal for Coast Region at Kibaha in which she was the applicant and which was dismissed with costs on 25/05/2017 against her for want of merit. Lastly, she mentioned Misc Land Application No. 6 of 2016 of Picha ya Ndege Ward Tribunal in which she was the applicant and which was also decided against her on 01/07/2014.

The applicant in her affidavit went further to allege that despite having the intention of "*lodging an appeal*" within time in this court, she could not do so due to illness that she suffered from "*12th of 2019*" to 2021. Expounding on how she suffered illness, she averred in her affidavit that she was admitted at Tumbi Hospital having been diagnosed with ulcers. In addition, she stated that the delay in filing review within time was not

caused by negligence on her part. Rather, it was caused by the sickness that she was suffering. She finally pleaded that the intended review has overwhelming chances of success and that if the present application is not granted, she would suffer irreparable loss over and above what she had already suffered.

The applicant's written submission in chief was, by and large, at variance with the affidavit. The only exception was the argument advanced in relation to her alleged sickness which somehow reflected the corresponding averments in the affidavit. In relation to this reason for delay in filing the present application, it was only argued by the applicant at page 2 of the said submissions thus and I quote:

That, the applicant reasonable ground of delayed to file an appeal in time because the applicant was be sick for long time this is reasonable course the applicant delayed to file an appeal on specific time. (sic). [Emphasis added]

Despite the seemingly relevance of the above argument to the present application, it is apparent that it was advanced with reference to an appeal and not review. This is contradictory in so far as the applicant filed the appeal in this court which was eventually dismissed with costs by Hon. Mallaba J. way back on 14/06/2019. This contradiction

notwithstanding, the rest of the arguments in the submission were not relevant to the key issue for determination in this application.

As far as the respondent's counter affidavit is concerned, the applicant has not shown reasonable or sufficient cause. The allegation that she was sick and hospitalized was disputed and hence delay in taking actions was disputed. It was argued that the allegation lacks proof. It was simply a manifestation of calculated move to continue disturbing the respondent and abusing court processes.

The submission in reply by the respondent reiterated and expounded on the points of opposition raised in the counter affidavit. In this respect, it was argued that the allegation of sickness and being hospitalized at Tumbi Hospital was neither supported by a proof nor a plausible exposition of the relevant dates as to when she was admitted and when she was discharged. The allegation of overwhelming chances of success was refused as there were no grounds of the intended review that were shown in the eyes of law.

It was further argued by the respondent in his submission in reply that the duty of the applicant to account for each day of delay was not discharged to account for a delay of about 20 good months. On this

argument, reliance was made on the case of **Muatafa Mohamed Raze vs Mehboob Hassanali Versi**, Civil Application No. 1164 of 2014 in relation to the obligation of an applicant like the present applicant to account for the delay for the entire period of the delay.

The case of **Unilever Tanzania Ltd vs Said Sudi and 26 Others**, Civil Application No. 88 of 2013 was also cited in relation to factors that the court should take into account in exercising its discretion in application for extension of time. They included length of delay, reasons for the delay, and degree of prejudice to the other party if the application is granted. In the end, I was urged to dismiss the application for lack of merit.

Having considered the rival submissions from both sides in the light of the affidavit and counter affidavit on the record, it is clear to me that in relation to the reason advanced to support the application there was the allegation that the applicant was suffering from illness having been diagnosed with ulcers. And that, she was as a result hospitalized at Tumbi hospital for quite a long time. As very well argued by the respondent, the period within which the applicant fell ill and hospitalized was not clearly defined and particularized.

The averment in the affidavit that the applicant was ill "*since 12th of 2019 up to 2021*", was insufficient as it was not only un clear but also it was not supported by any medical chit. In fact, the averment is at variance with the record which is clear that the applicant filed Misc. Land Case Appeal No. 57 of 2017, prosecuted it upto 14/06/2019 when Mallaba J. delivered the judgment dismissing the appeal with costs.

I noted earlier that when the present application was filed, a total of 31 months had already elapsed if one reckons from the delivery of the judgment. As the only reason advanced that the applicant was sick does not hold water as already pointed out herein above, there is nothing left as sufficient materials for the court to exercise its discretion in the favour of extension of time. I say so because the allegation of existence of overwhelming chances of success, which was also relied upon by the applicant is no longer a good reason upon which the court may exercise its discretion. Even if such were the case, the reason could still not help the applicant as there were no grounds in support of the intended review which were disclosed in the eyes of the law.

Crucially important, this court is at the moment not better placed to determine the merit of the intended review and indeed as to whether or not the intended review is likely to succeed. Such issue is one that must

be determined by the court when such review is properly before it and the court is properly addressed by the parties on the same. Accordingly, whether or not the intended review has overwhelming chances of success is not in the circumstances a factor that I can sufficiently consider in determining whether or not the application ought to be granted.

In the upshot and for reasons stated herein above, the application is without merit. It is accordingly dismissed with costs.

It is so ordered.

Dated and Delivered at Dar es Salaam this 12th day of July 2021.


B. S. Masoud
Judge

