

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 715 OF 2020

(Originating from the Judgment and Decree of Kilombero District Land and Housing Tribunal at Ifakara in Land Appeal No. 81 of 2017, original Land Case No. 58 of 2016 Ifakara Ward Tribunal)

CHEULA CHIFWILA APPLICANT

VERSUS

SCHOLASTIKA NG'WALE RESPONDENT

RULING

Date of last Order: 05.08.2021

Date of Ruling: 26.08.2021

A.Z. MGEYEKWA, J

This ruling is in respect of an application for extension of time for filing an appeal against the Judgment of Kilombero District Land and Housing Tribunal dated 29th August, 2018 in Land Application No. 81 of 2017. The application was brought under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The applicant filed an affidavit deposed by Mr.

Cheula Chifwila, the applicant. The application has encountered formidable opposition from the respondent and has demonstrated his resistance by filing counter affidavit, deponed by Scholastika Ngwale, the respondent.

When the matter was called for hearing on 23rd April, 2021, the applicant and respondent appeared in person. The appellant had already filed his application on 09th April, 2021 and the respondent was ordered to file his reply on 10th May, 2021. The appellant waived his right to file a rejoinder.

In his submission, the applicant stated that he delayed to file the instant application because he was unwell. He added that he was admitted on 31st October, 2018. To support his submission he referred this court to annexure "CC -2". He claimed to have made several follow-ups to obtain his copy of Judgment without success. He added that in January, 2020 he felt better but found himself out of time to lodge an appeal. Fortifying his submission, the applicant cited the case of **Marco Iseke v Trustee of The Diocese of Victoria Nyanza**, Revision No. 65 of 2013, the court held that:-

" That the term sufficient cause should not be interpreted narrowly but, should be given a wide interpretation to encompass all reasons

which are outside the applicant's power to control or influence resulting in a delay in taking any necessary step."

The applicant went on to submit that the categories of good cause in an application for extension of time are not restricted. Fortifying his submission he cited the case of **Trasease K. Rutakwa v Rutakwa**, Civil Application No.105 of 2011 of Tanzania. He further submitted that the applicant was therefore diligent in pursuing his rights. Sixteen days delay is not an inordinate delay on part of the applicant who was a layperson in the field of law as it was held in the case of **Felician Credo Simwela v Quamara Massod Battez & Abdillah Ahamed Yusuph**, Misc Civil Application No. 06 of 2018.

On the strength of the above submission, the applicant urged this Court to grant leave to the applicant to file an appeal out of time.

In reply, the respondent started by submitting that no tangible grounds or reasons have been established to warrant this Honorable Court to allow the applicant to file his petition of appeal out of time in this Honorable Court. The respondent stated that section 41 (2) of the Land District Courts Act, Cap. 216 [R.E 2019] requires the applicant to adduce good and sufficient cause to extend the time for filing an appeal either before or after the expiration of sixty days. He lamented that the applicant

lodged the instant application for an extension before this Court after a lapse of 883 days from the date when the District Land and Housing Judgment was delivered without accounting for each day of delayed.

He further submitted that the applicant was admitted on 31st October, 2018 which was 2 days after the time limit from the Judgment date, and therefore that they acted negligently to file the application. The respondents submitted that the applicant ought to account for each day of delay. The respondent stressed that the applicant has not established in his affidavit the delayed of approximately 883 days to lodge an appeal. Fortifying his argumentation he cited the cases of **Yusuph Same & Hawa Dada v Hadija Yusufu**, Civil Application No. 1 of 2008 (unreported), and the case of **Ramadhan J. Kihwani v TAZARA**, Application No. 401 of 2018.

In conclusion, the respondent urged this court to disregard the applicant's application for extension of time.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge the intended appeal against the decision of the District Land and Housing Tribunal for Ifakara in Land Appeal No. 81 of 2017. The position of the

law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

After taking into consideration what has been stated in the affidavit filed by the applicant and his submission, I would like to make an observation that the applicant's delay to file the appeal time is based on one ground that he was unwell. As amply submitted by the applicant, he has convinced this Court to find that his delay was due to his sickness which

is explicable and excusable as stated in the case of **John David Kashekya v The Attorney General**, Civil Application No. 107 of 2012 CAT (unreported). The Court of Appeal of Tanzania held that: -

"Sickness is a condition which is experienced by a person who is sick. It is not a shared experience. Except for children which are yet in a position to express their feelings, it is the sick person who can express his/her conditions whether he/she has the strength to move, work and do whatever kind of work he is required to do."

The applicant claimed he fell sick from 09th February, 2017 as per annexures CC-1 and CC-2. Thereafter the applicant was treated at Muhimbili National Hospital on 30/05/2018, 13/06/2018, 30/07/2018, 01/08/2018, 31/10/2018, and 28/11/2018. The said application Judgment to be challenged was delivered on 29/08/2018 certified on 25/10/2018.

Guided by the above cited case of **John David Kashekya**, I am bound by the Court of Appeal of Tanzania decision to reach a verdict in this application that a sickness is reasonable ground for a delay to file an application out of time as long as the applicant has convinced this court to believe him. I am also considered the age of the applicant who is 79

years old. Therefore, I proceed to grant extension of time to the applicant to file his appeal within 30 days from today.

Order accordingly.

Dated at Dar es Salaam this date 26th August, 2021.




A.Z.MGEYEKWA
JUDGE
26.08.2021

Ruling delivered on 26th August, 2021 via audio teleconference whereby both parties were remotely present.




A.Z.MGEYEKWA
JUDGE
26.08.2021