

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

**MISC. LAND CASE APPLICATION NO. 387 OF 2020**

(Originating from Misc. Land Appeal No.500 of 2017 and Misc. Land Application No.22 of 2018)

**MAIMUNA ABDALLAH MPANDA .....APPLICANT**

**VERSUS**

**TANZANIA POSTAL BANK LIMITED.....1<sup>ST</sup> RESPONDENT  
HARVEST (T) LIMITED.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 29.01.2021

Date of Ruling: 15.03.2021

**RULING**

**V.L. MAKANI, J**

MAIMUNA ABDALLAH MPANDA the applicant herein, is applying for extension of time to appeal to this court against the decision of Kinondoni District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 500 of 2017.

The application is made under section 41(2) of the Land Disputes Courts Act, 2002 as amended by Written Laws (Miscellaneous Amendment) (No.2) Act, 2016. The application is supported by the affidavit of the applicant. Mr. Ng'honga Fumbuka, the Principal Officer

of the respondents swore and filed a counter affidavit in opposition of the application.

With leave of the court the application was argued by way of written submissions. The applicant drew and filed her own submissions while Mr. Meiseyeke Msangi, Advocate, drew and filed submissions on behalf of the respondents.

Submitting in support of the application, the applicant said that on the date of delivery of the judgment she received information that her father passed away therefore she was not aware of the granted time within which to file her appeal. She said that she went to the burial ceremonies and when she came back as the tickets shows (**Annexure MA-3**) the time to file appeal had lapsed. She said that the delay was not intentional as on 12/02/2020 she informed the court of her absence (**Annexure MA-2**). She relied on the case of **Laurent Kiyenzi vs Mariam Shomvi, Misc. Land application No.956 of 2018, (HC-Land Division)** (unreported). She insisted that since her application for extension of time via Misc. Land appeal No.22/2018 (Hon. S.M Maghimbi, J) was granted on 10/02/2020 in her absence it is her prayers to be granted extension of time again.

In reply Mr. Msangi prayed to adopt the counter affidavit of Ng'honga Fumbuka that stated briefly the history of the application and added that the adjournment letter dated 11/02/2020 was delivered to this court on 12/02/2020, the date of ruling. He said that if the applicant managed to send someone to deliver the adjournment letter on the day of the ruling, then it was also possible for her to send someone to enter appearance to receive the ruling or adjourn the matter on her behalf. He added that all the tickets by the applicant show that she travelled from DAR to MTWARA and there are no return tickets that was presented to support what the applicant said in paragraph 5 of her affidavit. He said that ticket No.128489 shows that on February 2020 she travelled from DAR to MTWRA at 11:30 hrs. Bus ticket No. 50952 shows that she had travelled from DAR to MTWARA on 28/02/2020 and not from MTWARA to DAR. He further said, the affidavit sworn by JAFARI MAIRO MPANDA the son of the late ABDALLAH MAIRO MPANDA stated that ABDALLAH MAIRO MPANDA who died on 10/02/2020 at Mtwara due to COVID-19. But the deponent did not state anywhere in the affidavit how the death of ABDALLAH MAIRO MPANDA is related to the applicant and the applicant did not state the name of her deceased father. He said that

while in his affidavit JAFARI ABDALLAH MPANDA stated that his father died of COVID 19 on 10/02/2020 but the first case of COVID 19 was officially announced on 16/03/2020. He added that the same affidavit was affirmed and delivered by JAFARI ABDALLAH MPANDA at Mtwara on 16/07/2020 before the Commissioner for Oaths who is in Dar es Salaam and it was the same Commissioner for Oaths who witnessed the signing of applicant affidavit on 16/07/2020. He insisted that the applicant is not honest and has no valid reason for extension of time. He said that if the application is denied the applicant will not suffer irreparable loss since she knew before she was granted loan facility that in case of default the security will be sold in public auction. He relied on the case of **Sebastian Ndaula vs Grace Rwamafa, Civil Application No.04 of 2014 (CAT-Bukoba)** (unreported). He submitted that the court has been wrongly moved as all laws were revised in 2019 and there are no more revised editions of 2002. He prayed for the court to dismiss this application with costs.

In rejoinder the applicant reiterated her main submissions and insisted on the right to be heard pursuant to the provisions of Article 13 (3) and (6) of the Constitution of the United Republic of Tanzania as amended from time to time.

Having gone through the affidavits and submissions from the parties, the point for determination is whether this application has merit. It is of essence to note that, in Misc. Land application No.22 of 2018 the applicant applied for and was granted 14 days within which to file her appeal. However, he defaulted and once again filed this application for extension of time to file appeal. The applicant's main reasons for delay in filing appeal is that on the date of ruling in Misc. Land application No.22 of 2018 she received shocking news of her father's death and therefore she had to travel to Mtwara, so she was not aware of the time granted by the court within which to file the appeal. The ruling in Misc. Land application No.22 of 2018 was delivered on 12/02/2020. On the same day the applicant notified the court through the letter (**Annexure MA-2**) that her father passed away and that she had to travel to Mtwara. It is worth to remember that the judgment was delivered on the same day the applicant presented the notice of absence. It was much easier for his representative who presented the letter to make follow up of the verdict and inform the applicant. This raises questions about the motive behind because on the same day of his father's death the applicant managed to organise for the notice of absence and yet failed to instruct his representative

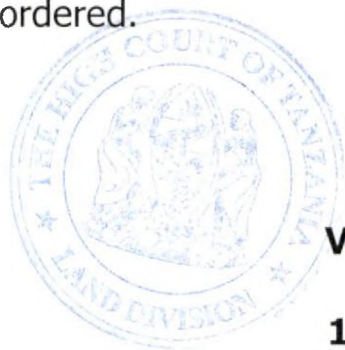
to make follow up of the verdict/ruling? Under the circumstances, there is an obvious intention by the applicant to mislead the court in believing that she was unaware of the days that granted for her to file appeal in Misc. Land Application No. 22 of 2018. If at all there was truth in what the applicant is saying the easiest thing she could have done as I have said above, would have been to let the person who brought the letter to know of what transpired in court and inform her accordingly.

The applicant alleged that she travelled to Mtwara for her father's funeral on 11/02/2020 and returned on 28/02/2020. But all the two tickets that were attached to the affidavit (**Annexure MA-3**) show that the applicant travelled twice to Mtwara. One of the tickets show that she travelled to Mtwara on the bus named BUTI LA ZUNGU BUS on 11/02/2020; and on 28/02/2020 she once again went to Mtwara on board BARAKA CLASSIC BUS. This means the contents of the affidavit and the annexures do not say the same thing. This means it is not known when the applicant came back to Dar es Salaam. This raises uncertainties as to the applicant's reasons for delay that she went to Mtwara on 11/02/2020 and came back on 28/02/2020 while the ticket says that the latter date is when she went to Mtwara. It is

therefore obvious that the applicant has been caught in her own net of lies. And therefore, the doubts created cannot allow the court to safely believe that the reason for the delay was the trip by the applicant to Mtwara.

Conclusively, the applicant's reason for delay has no merit. The application is therefore dismissed with costs.

It is so ordered.



*V.L. Makani*

**V.L. MAKANI  
JUDGE  
15/03/2021**