

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

**MISC. LAND APPLICATION NO. 249 OF 2022**

(Arising from the decision of Ilala District & Housing Tribunal in Application No. 141 of 2020)

**KAZIJA HASSAN.....APPLICANT**

**VERSUS**

**HALIFA MWINYIMKUU..... RESPONDENT**

Date of Last Order: 16.08.2022

Date of Ruling: 27.09.2022

**RULING**

**V.L. MAKANI, J**

This application is by KAZIJA HASSAN. She is applying for extension of time within which to file an appeal against the decision of Ilala District Land and Housing Tribunal (the **Tribunal**) in Application No. 141 of 2020 (Hon. A.R. Kirumbi, Chairman).

The application has been made under section 41(2) of the Land Disputes Court Act, CAP 216 RE 2019 and is supported by the affidavit of the applicant herein. The respondent opposed the application by filing a counter-affidavit.

With leave of the court the application was argued by way of written submissions drawn and filed by the parties herein personally.

In her submissions, the applicant said the judgment of the Tribunal was delivered on 25/03/2022. She said after the judgment was delivered, she started measures to obtain copies of the judgment which was made available on 29/04/2022. However, the applicant waited until 02/05/2022 to engage a lawyer because on 30/04/2022 to 01/05/2022 was a weekend as such her advocate was not available and she also had to find fees for the services of the advocate. On the same day of 02/05/2022 the applicant said she experienced health problems in relation to respiratory system so with these mild symptoms she could not conduct her daily activities and when she attended Amana Hospital she was diagnosed with Bronchial Asthma and Typhoid fever (**Annexure HK-1** to the Reply to the Counter-affidavit). She said she was ill from the said 02/05/2022 up until 16/05/2022 when she was able to consult her advocate who prepared documents which were filed in this court on 19/05/2022. She said she was delayed only for 9 days which is reasonable and the respondent did not suffer in any form. She relied on the case of **Damari Watson Dibinja vs. Innocent Sangano, Civil Application No. 30 of**

**2021 (HC-Kigoma)** (unreported) where the court stated that the delay of 12 days was reasonable. She also cited the case of **Abdulrahman Salemeen Isalm vs. Africarriers Limited, Misc. Commercial Application NO. 203 of 2018 (HC-Commercial Division)** (unreported) where the court said extension of time is entirely dependent on the court's discretion and further that the applicant has the burden of adducing sufficient reasons and to account for each day of delay. The applicant said it was her belief that she has been able to account for each day of delay and she humbly prayed for the application to be granted.

In reply, the respondent adopted the contents of his counter affidavit. He said the principle for grant of extension of time was laid down in the case of **Lyamuya Construction Company Limited vs. Board of the Registered Trustees of Young Women Christian Association of Tanzania, Civil Appeal No. 2 of 2010** (unreported). He said according to the principles in the said case the applicant has failed to account for all the period of delay from 25/03/2022 to 20/05/2022 when this application was filed. He said the applicant starts her story on 02/05/2022 after having health problems while she was aware that the judgment was delivered on

25/03/2022. He said in the case of **Glory Shifwaya Samson vs. Raphael James Mwinuika, Civil Application No. 506/17 of 2019 (CAT-DSM)** (unreported) the Court of Appeal declined to exercise its discretion in favour of the applicant because he failed to account for each day of the delay.

The other principle according to the respondent is that the delay should not be inordinate. He said there is a period from 25/03/2022 to 20/05/2022 and also the period from 29/04/2022 when the copies of the judgment were collected to 20/05/2022 when this application was filed. He said that the 9 days of delay claimed by the applicant because of sickness are not justifiable as the medical report was filed in the reply to the counter affidavit and not the main affidavit.

As for the principle of lack of diligence the respondent stated that the applicant was aware that judgment was delivered on 25/03/2022 and the copies of the judgment and decree were ready for collection on 29/04/2022. He thus said the applicant failed to pursue her rights diligently. He concluded by stating that the applicant has failed to meet the established factors in the cited cases for her application to be granted. He said the applicant has failed both in her affidavit and

submissions to account for the days of the delay. He prayed for the application to be dismissed with costs.

In rejoinder the applicant reiterated her main submissions and emphasized that the reason for late filing of the appeal was sickness and she has attached a medical report and the law does not prohibit her from attaching the said medical report to her counter-affidavit as alleged by the respondent. She prayed that this argument by the respondent be disregarded. She repeated her prayer for the application to be granted.

It is the position of the law that grant of an application for extension of time is purely the discretion of the court. However, that discretion must be exercised judicially by considering whether the applicant has given sufficient cause to account for the delay. See the case of **Yusuf Same & Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002) (CAT-DSM)** (unreported) and **Abdul-rahman Salemeen Islam** (supra).

In the application before this court the applicant's reasons for delay in filing the appeal are firstly, there was a delay in the supply of

copies of the judgment and decree and, secondly, the applicant was not in good health.

As for the first reason, it is evident that the judgment and decree were ready for collection on 29/04/2022. But the applicant has not shown efforts that he followed up and wrote a letter for the request of the said copies of judgment and decree. The respondent said there was a letter by the applicant dated 02/05/2022 but this letter has not been attached to the affidavit. This also means the letter, if any, was written after the collection of the copies of the judgment and decree because according to the affidavit (paragraph 5) the applicant collected the said copies on 29/04/2022. However, the receipt attached to the affidavit reflects that payment was made on 02/05/2022 which is presumed to be the date when the said copies of the judgment and decree were collected. In that respect the copies were ready for collection in time that is on 29/04/2022 but they were collected and paid for on 02/05/2022.

The applicant said in her reply to the counter affidavit that on 02/05/2022 she became sick. But it is also the date which she collected the copies of the judgment and decree. In her affidavit she

generally stated that she contracted a disease, but she did not give dates (paragraph 4 of the affidavit) and no medical certificate was attached. The said certificate was attached to the Reply to the counter-affidavit after the respondent queried about it in his counter-affidavit. This means the issue of sickness is tainted with falsehood because if the applicant was sick from 02/05/2022 and the medical certificate attached is dated 17/05/2022, then by 19/05/2022 when this application was filed she would have known what she was suffering from and would not have generally stated in her affidavit that "*I contracted a disease that delayed my appeal*". Further as said hereinabove, if the applicant had the medical certificate, she would have attached it to the affidavit and not wait to attach it to the reply to the counter affidavit.

It is apparent that the medical certificate was sourced afterwards and possibly after the respondent questioning it. In view thereof the issue of sickness is questionable and the applicant who has alleged sickness has not proved this fact to the satisfaction of this court. The affidavit is therefore tainted with untruth as such it cannot be relied upon. It is common knowledge that where an affidavit has elements of falsehood then it cannot be relied upon (see the case of **Ignazio**

**Messina vs. Willow Investments SPRL & Another, Civil Application No. 21 of 2001 (CAT-DSM)** (unreported). In that respect, the affidavit and the reply to the counter-affidavit thereof raises lots of questions as to the sickness of the applicant as such they cannot be relied upon. Subsequently, the reason that the delay was on account of sickness cannot stand.

In the result, the reasons advanced by the applicant are not sufficient to warrant this court to exercise its discretionary powers to grant extension of time. The application is hereby dismissed with costs for want of merit.

It is so ordered.



  
**V.L. MAKANI**  
**JUDGE**  
**27/09/2022**