

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

MISC. LAND APPLICATION NO.93 OF 2022

(Arising From Misc. Land Appeal No. 75 Of 2021)

AHAMAD JUMA..... APPLICANT

VERSUS

NEEMA MORICE JONATHANRESPONDENT

Date of Last Order: 16.08.2022
Date of Ruling: 27.09.2027

RULING

V.L. MAKANI, J

The applicant AHAMAD JUMA is applying for extension of time to file an application seeking for certificate on point of law in order to file appeal to the Court of Appeal of Tanzania against the decision of this court in Misc. Land Appeal No.75 of 2021 from this court dated 21/09/2021 (Hon. Mgeyekwa, J). The application is supported by the affidavit of the applicant herein. With leave of the court the application was argued by way of written submissions.

The applicant drew and filed his submissions with the assistance of The Juristic Assistance and Social Development in Tanzania while Mr.

Benson Florence, Advocate drew and filed submission in reply on behalf of the respondent.

The applicant submitted that the reasons for delay in filing the application for certification on point of law was beyond his control and not attributed by negligence on his part. He said being dissatisfied with the impugned decision he suffered health problems which became serious and he was not able to file the application. He said he somehow recovered on 22/02/2022 but he was still not able to move a long distance. He added that he is a layperson so he is not conversant with the legal procedures. He said after he secured the certified copy of the decision of this court he spent time to seek legal assistance to prepare and present the application. He said it was not until he found Juristic Assistance and Social Development in Tanzania. He said that was another reason for the delay in filing the application. He said those were sufficient reasons and he prayed for the court to grant this application.

In reply Mr. Florence said that the reasons for delay advanced by the applicant, were delay in obtaining copies of the decision, sickness as well as ignorance of the law in procedure. He said that there is no

proof that the applicant wrote a letter requesting for certified copies. That he has not even stated when he wrote the said letter. He said section 47 (3) of the Land Disputes Courts Act, Cap 216 RE 2019 does not require attachment of copies of the decision when making application for certificate on a point of law so the delay cannot be pegged on waiting for the certified copy of the decision. He relied on the case of **Hussein Manyama vs Chairman of Lupilo and Another, Misc. Application No.78 of 2018 (CAT-DSM)** (unreported).

On the issue of sickness, he said that the attached letter and discharge form have no evidential value to prove sickness. He said the attached letter bears the name of JUMA ABDALA HAMAD while the applicant's name is AHAMAD ABDALAH. He said there is no explanation as to the difference in the names. He insisted that the attached letter does not prove that the applicant was sick. That there is no affidavit of Dr. Lassana who is the author of the alleged letter to prove the contents of the letter, and further the said letter has been addressed to whom it may concern but was not received by this court. He thus pointed out that sickness cannot be a good ground in these circumstances. He argued that ignorance of the law is not an

excuse and cannot stand as a good cause for delay. He relied on the case of **Wambele Mtumwa Shahame vs Mohamed Hamis (2018) TLR 39.**

Mr. Florence argued further that the impugned decision was delivered on 21/9/2021 while the instant application was filed on 9/3/2022. That it was filed after expiry of 166 days and there is no account of such delay. He said the applicant argued to spent some time looking for legal assistance but there is no affidavit of such legal officer to substantiate the same. He has even failed to point out points of law for the court to take in to account while exercising discretion. That the point that an appeal has a chance of success has never been sufficient reason for extension of time. He said that the delay was greatly attributed by the applicant. He prayed for the application to be dismissed with costs.

In his rejoinder the applicant reiterated what he stated in the main submissions.

I have gone through the submissions by the applicant and the learned Counsel Mr. Florence. I have also gone through the affidavit and

counter affidavit filed. The main issue for consideration is whether the application at hand has merit.

It has been stated time and again that extension of time is the discretion of the court. However, for the court to exercise such discretion, the applicant has the duty to place before the court sufficient reasons for the delay, so that the court can judiciously exercise such discretion. Some principles, though not exhaustive in exercising the discretion by the court were stated in the case **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT)**(unreported), the Court of Appeal outlined the following four factors to be considered:

- (a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

In this application, the applicant expressed health reasons and ignorance as the main reasons for delay. The discharge form

(**Annexure 2** to the affidavit) bears the name of HAMAD JUMA ABDALLAH (69 years). The letter from Temeke Regional Referral Hospital bears the name JUMA ABDALLAH HAMAD (71 years). These names are different from the applicant's name in this application which appears as AHAMAD JUMA. There is no affidavit filed to prove that the name appearing in the discharge form and the letter depicts the same person as the applicant. In essence the application and the attached documents reflect three different people that is, AHAMAD JUMA, HAMAD JUMA ABDALLAH of 69 years and JUMA ABDALLAH HAMAD of 71 years. In the circumstance, the persons who attended the hospital whose medical certificate has been attached to the affidavit are not the applicant herein.

Without prejudice to the above, the records reveal that the impugned decision was delivered on 21/09/2021. The discharge form shows that the alleged applicant was admitted in hospital on 28/3/2020 and was discharged on 30/3/2020. That is very clear that the alleged applicant was admitted before the delivery of the impugned decision. It is strange that the sickness which occurred prior to the delivery of decision is listed as an attribute of applicant's delay. Further, as per the records, the impugned decision was delivered on 21/9/2021 and

the application at hand was filed on 9/3/2022. That is more than six months from the date of the decision. Even if it was for the applicant to seek legal assistance, six months is inordinate delay which, in any case, has not been accounted for (see **Lyamuya Construction Company Limited** (supra)).

From the above explanations, it is clear that the applicant has failed to give sufficient reasons for the delay. Consequently, the application has no merit, and it is hereby dismissed with no order as to costs.

It is so ordered.



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