

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 224 OF 2022

(Arising from judgment and decree of Land Appeal No. 68 of 2021 (Hon. T.N. Mwenegoha, J.))

MWASILI JUMA RAMADHANI.....APPLICANT

VERSUS

LUFINGO MWAIPOPO TENDELA..... RESPONDENT

RULING

Date of order: 21.09.2022

Date of Ruling: 29.09.2022

KADILU, J.

This is an application for firstly, extension of time to file leave to appeal to the Court of Appeal against the decision in Land Appeal No. 68 of 2021 before Hon. T.N. Mwenegoha, J. Secondly, extension of time to file notice of appeal to appeal to the Court of Appeal out of time; and thirdly, costs of the application. The application is made pursuant to s. 11(1) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2002] and is supported by an affidavit of Mwasili Juma Ramadhani, the Applicant.

The affidavit consists of 14 grounds, but for the purpose of this application, I will set out just a few of them as follows:

1. The Respondent herein filed a land application in the District Land and Housing Tribunal for Kibaha for declaration that the Applicant trespassed to his house without considering that the Respondent had no cause of action on her own capacity.
2. The said land application was determined without rectifying those irregularities and on 06.04.2021, the Tribunal delivered its judgment and decree by declaring the Respondent a lawful owner of the disputed house. It ordered the Applicant to vacate the suit house immediately.
3. Dissatisfied with the said decision, the Applicant filed an appeal to this Court, Land Appeal No. 68 of 2021.
4. On 23.09.2021, the appeal was dismissed with costs. The Tribunal was directed to rectify its records by inserting the proper legal capacity of the Respondent as an administratrix of the estate of the late Johari Maganga.
5. Being aggrieved by the said decision, on the same day of pronouncement the Applicant felt a serious hypertension myoma and the same was reported to Tumby Regional Referral Hospital on 03.09.2021.

6. The Applicant was advised by the Doctor not to engage in any business that shall cause her frustration and was required to return for check-up and medication on 06.01.2022.
7. The Applicant was admitted at Tumbi Regional Referral Hospital on 06.01.2022 and was given 4 months of home bed rest.
8. On 11.05.2022, the Applicant was allowed to continue with other businesses after having taken antihypertensive medication as directed by the Doctor. The blood pressure became normal.
9. The following points of law have to be determined by the Court of Appeal:
 - (a) Whether it was proper for the Applicant to be sued personally in the District Land and Housing Tribunal, Land Application No. 98 of 2018.
 - (b) Whether it was lawful for the Judge to order rectification of the tribunal's records without nullifying its proceedings.

On the day of hearing, the Applicant was represented by Mr. Frank Michael (Advocate) and the Respondent was represented by Mr. Shogholo Charo, learned Advocate. In motivating the application, Mr. Frank stated that the Applicant was sick and unable to continue with any activities for 4 months hence, could not file the application for leave to appeal in time. He urged the court to grant the extension of time because the Applicant had a good

cause for the delay. His proposition was supported by the case of *Emmanuel R. Maira v Bunda District Council District Executive Director of Bunda District Council*, Civil Appeal No. 66 of 2010.

In that case, the Court of Appeal ruled that incapacitation by sickness provide good cause for delay in filing notice of appeal. He also cited the case of *Eqbal Ebrahim v Alexander K. Wahiyungi*, Civil Application No. 235/17 of 2020, Court of Appeal of Tanzania at Dar es Salaam (unreported) in which the Court stated that the issue of illegality justifies an extension of time so that the point of illegality can be ascertained and if established corrected accordingly.

In opposing the application, Mr. Shogholo Charo, learned Counsel submitted that under s. 14 (1) of the Law of Limitation Act [Cap. 89 R.E.2019], the Applicant is required to account for every day of delay and give reasonable and sufficient reason for the delay. He told the court that the Applicant delayed to file the application for about 300 days without assigning any good cause. He added that it is not true that the Applicant contracted a hypertension myoma disease due to the decision of this court in Land Appeal No. 68 of 2021. This is so because after she was defeated in the said case,

the respondent filed taxation application and, on 12.11.2021 the applicant attended personally accompanying her Advocate.

The learned Advocate argued that sickness did not prevent the applicant from filing notice of appeal in time because she could do so through her Advocate. Therefore, the reasons advanced cannot amount to reasonable and sufficient cause as required by the law. The learned Counsel cited the case of *Ratna v Kumar Singh* [1964] 3 ALL ER 93 in support of his argument.

I have examined the affidavit of the applicant and submissions by the learned Counsel for the parties and I now turn to determine the application at hand.

As per the records, judgment was pronounced on 24.09.2021. The present application was filed on 12.05.2022. Therefore, the delay was for about 228 days. The applicant claims to have fallen sick for 4 months after shock caused by the outcome of her appeal in the High Court (Land Division). However, 4 months is only 120 days while the delay was for 228 days as shown.

In the case of *Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 (unreported), the Court laid down four factors to be considered before granting extension of time:

- (a) The delay should not be inordinate;*
- (b) The applicant must account for all the period of delay;*
- (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; or the illegality of the decision sought to be challenged.*

As already shown, the delay by the applicant was inordinate and she has failed to account for each day of delay. The Applicant alleged that her sickness was caused by an unexpected result of her appeal, but the record shows that she fell sick on 03.09.2021 while the complained judgment was pronounced on 24.09.2021. She also failed to show diligence because on the same day that the judgment was pronounced, she could apply for leave to appeal informally as provided under Rule 45 (a) of the Court of Appeal Rules. Moreover, under the provisions of s. 47 (3) of the Land Disputes Courts Act [Cap. 216 R.E. 2019], certificate on the point of law is not a requirement for appeal in matters not originating from the Ward Tribunal. As such, it was unnecessary for the Applicant to apply for certification on the point of law by the High Court before she could file notice of appeal.

As for the last factor laid down in the case above, the applicant has raised allegations of irregularity in her affidavit. For example, she has asserted in paragraph 5 of the affidavit that the dispute was determined by the District Land and Housing Tribunal without considering that the Respondent had no cause of action on her own capacity. She claims, this irregularity was not rectified by the High Court on appeal. She has claimed further that it was not proper for her to be sued personally in the Land Application No. 98 of 2018 and that, it was unlawful for the Judge to order rectification of the Tribunal's records without nullifying the proceedings.

From these assertions, it is clear that the Applicant has raised some irregularities in the decision that she is seeking to challenge in the Court of Appeal. The **Black's Law Dictionary, 9th Edn. (2004)** at pg. 906 defines the term 'irregularity' as an act which is not in accordance with the law, method or usage. In pg. 815, the word 'illegality' is defined as an act that is not authorized by law.

In view of this, I am bound by the decision of the Court of appeal in the case of *Eqbal Ebrahim v Alexander K. Wahiyungi (supra)* that the issue of illegality justifies an extension of time even where the Applicant has not shown a

good cause for the delay. This was also the position in the case of *Principal Secretary, Ministry of Defence & National Service v Dervan Valambia* [1992] TLR 182.

Accordingly, the application for extension of time to file leave to appeal is granted. The Applicant to file notice within fourteen (14) days from the date of this Ruling. No order as to the costs. It is so ordered.



A handwritten signature in blue ink, appearing to read "M. J. Kadilu", is written over a horizontal dotted line.

KADILU, M. J.

JUDGE

29.9.2022.

Ruling delivered on 29th September, 2022 in the presence of Mr. Frank Michael, Advocate for the Applicant, and Mr. Shogholo Charo, Advocate for the Respondent.



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KADILU, M. J.

JUDGE

29.9.2022.