

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO. 418 OF 2022**

(Originating from the Judgment and Decree of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Application No. 206 of 2015)

**EMMANUEL IKOKI ..... APPLICANT**

**VERSUS**

**HENRY BUNDALA ..... RESPONDENT**

**RULING**

*Date of last Order: 17.10.2022*

*Date of Ruling: 18.10.2022*

**A.Z.MGEYEKWA, J**

This ruling is in respect of an application for an extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal for Mwananyamala in Application No. 206 of 2015. The application is preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The application is supported by an affidavit

an affidavit deponed by Emmanuel Ikoki, the applicant. The applicant has set out the grounds on which an extension of time is sought. The application has met opposition, fielded by the respondent, through his counter-affidavit deponed by Mr. Henry Bundala, the respondent in which allegations of accounting for the days of delay are valiantly denied.

When the matter was called for hearing on 17<sup>th</sup> October, 2022 the applicant enlisted the legal service of Mr. Silayo, learned counsel, and the respondent enjoyed the legal service of Mr. Joseph Mafie, learned counsel.

Submitting for the applicant was Mr. Silayo, his submission was premised on what is stated in the supporting affidavit. The grounds which are considered to be worth consideration by this Court for an extension of time are because the applicant was feeling unwell. Mr. Silayo contended that the applicant was the lawful owner of the surveyed Plot No. 472 Block 'E' located at Tegeta, Kinondoni Municipality.

Mr. Silayo submitted that the applicant delayed to file an appeal, a lapse of 56 days. He added that the applicant was not negligent but due to his age of 70 years and poor health condition; he is suffering from BP and diabetes, therefore, he was not able to take proper steps to file an appeal within time. The counsel went on to submit that the applicant was treated at Tegeta

Mission Dispensary. To buttress his submission he referred this Court to the Hospital outpatient card. The learned counsel for the applicant continued to submit that the applicant has greater chances of success since he is the lawful owner of the suit land and lived in the suit land for more than 29 years. In conclusion, Mr. Silayo urged this court to grant the applicant's application without costs.

In reply, the learned counsel for the respondent urged this court to adopt the counter affidavit to form part of his submission. Mr. Joseph argued with some forces, he contended that in order to extend time the applicant must show sufficient cause. Mr. Joseph valiantly argued that the applicant's grounds of sickness are supported by a purported registration card without tendering any document to prove if the applicant attended medical treatment or if he was admitted to the hospital. To support his submission, he cited the case of **Hawa Issa Mchirya v Ramadhani Idd Mchirya & Other**, Civil Application No. 27 of 2009. He stressed that the applicant's ground of sickness does not vitiate the requirement of accounting for the days of delay.

Mr. Joseph continued to argue that there are factors to be looked at when the Court considers extending time; the applicant must account for the days of delay and the delay should not be inordinate. Supporting his submission

he cited the case of **TCCI Company Ltd v Dr. Godeon H. Kaunde**, Civil Application No. 310 of 2019.

It was his submission that in the light of the above submission the applicant's grounds for the delay does not constitute good cause for his delay. Ending, Mr. Silayo beckoned upon this Court to dismiss the applicant's application with costs.

In his brief rejoinder, the counsel for the applicant reiterated his submission in chief. He added that the counsel for the respondent did not submit on greater chances of success. He insisted that the applicant is old and he is unwell therefore he is under the Doctor's observation. For the interest of justice and apply of overriding principles, he urged this court to grant the applicant's prayer made in the Chamber Summons.

From the parties' rival contentions, the question is whether the application has raised sufficient grounds capable of moving this Court to grant his application.

The position of the law is settled and clear that an application for an 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 was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

I fully subscribe to the submission of Mr. Joseph's that the applicant has failed to account for the days of delay. I understand that sickness is considered a good cause for an extension of time, however, the applicant was required promptly to move the Court for an extension of time after the lapse of the days of instituting the appeal. In case he found himself out of time then he was supposed to file an application for an extension of time and account for each day of delay. Consequently, this ground of accounting for days of delay is not met.

Regarding the ground of illegality. After a close scrutiny of the parties' arguments and the applicant's affidavit, I am satisfied that the applicant has raised grounds of illegality in his affidavit, particularly in paragraph 8. The applicant claimed that the decision of the District Land and Housing Tribunal is embodied with material illegality that is apparent on the face of the record. The counsel in his submission insisted the applicant has greater chances of success. The counsel insisted that the applicant is the lawful owner of the suit land and he intended to prove his allegation.

Having made the above observation, I find that this point of illegality meets the requisite threshold for consideration as the basis for the enlargement of time and that this alone, is weighty enough to constitute sufficient cause for an extension of time.

In sum, based on the foregoing analysis, I am satisfied that the instant application has merit. Therefore, I grant the applicant's application to lodge an appeal within 30 days from today.

Order accordingly.

Dated at Dar es Salaam this date 18<sup>th</sup> October, 2022.



  
A.Z.MGEYEKWA  
**JUDGE**  
18.10.2022

Ruling delivered on 18<sup>th</sup> October, 2022 in the presence of Mr. Joseph Mafie, counsel for the respondent also holding brief for Mr. Silayo, counsel for the applicant.



  
A.Z.MGEYEKWA  
**JUDGE**  
18.10.2022