

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.241 OF 2021**

(Arising from Land Case No.302 of 2010 dated 11th July, 2016 Hon. C.W
Makuru, J)

ISAAC MINJA APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF CHAMA

CHA MAPINDUZI 1ST RESPONDENT

TEMEKE MUNICIPAL COUNCIL 2ND RESPONDENT

THE COMMISSIONER FOR LANDS 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

RULING

Date of last Order: 28.10.2022

Date of Ruling: 31.10.2022

A.Z.MGEYEKWA, J

This ruling is in respect of an application for an extension of time to lodge a Notice of Appeal out of time against the decision of this court in Land Case No. 302 of 2010. The application, preferred under the provisions of section

11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] and section 95 of Civil Procedure Code, Cap. 33 [R.E 2019]. The application is supported by an affidavit deponed by Isaac Minja, the applicant's Advocate. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deponed by Paul Joseph Mkenda, the learned counsel for the respondent.

When the matter was called for hearing on 26th October, 2022 when the matter came for hearing, the applicant enlisted the legal service of Mr. Msumi, learned counsel, and the respondent enjoyed the legal service of Mr. Paul Mgenda, learned counsel for the 1st respondent, and Ms. Jenifer Msanga, learned counsel.

In his submission, in support of the application, Mr. Msumi urged this court to fully adopt the affidavit. Mr. Msumi submitted that the applicant was supposed to file a Notice of Appeal as per Rule 83 (3) of Court of Appeal Rules but he was unable to do so due to intensive illness. He went on to submit the applicant seriously had a spinal injury and was admitted in January, 2017 at MOI. He went on to submit that the applicant continued to attend clinic and orthopedic, however, he wanted to lodge a Notice of Appeal.

The counsel submitted that this Court has the power to extend time to the applicant to file an appeal out of time, however, the said power must be exercised judiciously and upon showing good cause. To fortify his submission he cited the cases of **Osward Masatu Mezarume v Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010 at Mwanza, **S L Isangi Auction Mart Court Broker v Samwel Kimaro**, Misc. Land Application No. 75 of 2020 H/C Mwanza and **Mathias Abasi v Anne John**, PC Criminal Appeal No. 07 of 2021 at Mwanza (all unreported).

On the strength of the above submission, he urged this Court to grant the applicant's application to file an appeal out of time.

The applicant's submission was rebutted by Mr. Paulo Mgenda, learned counsel for the 1st respondent, and Ms. Jenifer Msanga for the 2nd, 3rd, and 4th respondents who submitted separately. Mr. Paulo urged this Court to adopt the counter affidavit and form part of his submission. He contended that they have perused the applicant's affidavit and noted that the applicant has not accounted for the days of delay. He submitted that annexure IM-2 when the Judgment was delivered the applicant was present in person and his counsel was also present. He went on to submit that the letter from Muhimbili dated 11th July, 2016 when the Judgment was delivered. He added

that the record reveal that the applicant attended medical clinics on 16th March, 2016 and 28th August, 2016 in between the Judgment was delivered, thus, in his view, the applicant had time to file a Notice of Appeal because there was no medical information. He added that from 11th August, 2016 the clinic was scheduled in January, 2017, the same displays that the applicant was fit enough to file a Notice of Appeal but he failed to do so.

Mr. Paul did not end there he argued that annexure IM-3 is a document from KCMC, the applicant alleges that he was admitted on 5th February, 2021 and discharged on 13th February, 2021 and from that date there is no any document to support his lateness since the instant application was filed on 25th May, 2021, 90 days from the date when the applicant was discharged from the hospital. He valiantly contended that the applicant was negligent and had no interest to prosecute his case. He stressed that the delay of four years is inordinate.

On the strength of the above submission, the counsel for the 1st respondent urged this Court to dismiss the application for lack pf merit.

The learned counsel for the 2nd, 3rd, and 4th respondent submitted in length. Ms. Jenifer urged this Court to adopt the 2nd, 3rd and 4th respondent joined counter affidavit and form part of her submission. She began by stating that

the applicant under section 14 (2) of the Law of Limitation Act, Cap. 89 requires to state sufficient cause for an extension of time. Ms. Jenifer argued that the Court of Appeal of Tanzania has set guidelines to be considered before granting an application for an extension as enumerated in the case of **Lyamuya Construction Camp Ltd v the Body of Registered Trustees of Young Women**, Civil Application No.2 of 2010, CAT at Dar es Salaam. She stated that the applicant must account for all the periods of delay and the delay should be inordinate. She went on to submit that the applicant the Court has wide discretionary powers to extend time as stated in the **case of Kalunga & Company Advocates v NBC Ltd** (2006) TLR.

She insisted that the applicant must account for the days of delay and show diligence and no inaction on his part. Ms. Jenifer argued that the delay of four and 9 months is caused by the applicant and he has failed to account for the days of delay. She stated that the impugned Judgment was delivered on 11th July, 2016 and he filed the present application on 25th May, 2021 instead of filing the same on 10th August, 2016. Ms. Jenifer went on to argue that the applicant's lateness to file the Notice of Appeal is due to sickness. She added that the applicant has not accounted for the delay of 18 days from 10th August, 2016 and 28th August, 2016 when he attended the clinic at Muhimbili. Ms. Jenifer took time to account all the days by stating that the

applicant stated that he was admitted at MOI in January, 2017 but he has not accounted for the period before January, 2017 the period in which he was not admitted. Ms. Jenifer went on to argue that the applicant has failed to prove that he was admitted since annexure IM -1 & IM-2 are records to show that the applicant was attending clinics and he was an outpatient.

Ms. Jenifer continued to submit that the applicant has failed to account for the delay of 4 months from 28th August, 2016 when he was attending clinic (IM-2) to 13th January, 2017 the period of the next clinic. She added that the applicant generally did not account for the days of delay all the time when he was attending clinic and the next day after the clinic.

On the strength of the above submission, Ms. Jenifer urged this court to find that this application is demerit hence this Court should not exercise its discretionary power to extend time but rather dismiss the application with costs.

In his rejoinder, Mr. Msumi reiterated his submission in chief. Stressing on the ground of the medical documents, he stated that the applicant's ID shows that the applicant was attending clinic from 23rd March, 2015 to date. He was certain that the applicant has accounted for the days of delay. Ending, he urged this Court to grant the applicant's application.

I have closely followed the submissions for and against the application and examined the affidavit and counter-affidavit, the issue for our determination is *whether the application is meritorious*.

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. In the application for an extension of time, the applicant is also duty-bound to account for the days of delay.

The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May, 2019 and the case of **Karibu Textile Millss v Commissioner General (TRA)**, Civil Application No. 192/20 of 2016, **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

“Dismissal of an application is the consequence befalling an applicant seeking extension of time who fails to account for every day of delay.”

Counting the days from the date when the impugned Judgment was delivered on 11th July, 2016 to the date when he lodged the instant application on 25th May, 2021 is a lapse of 4 years and 2 months. That means the applicant is required to account for each day of delay to justify his lateness of 4 years and 2 months. The main reason for the applicant's lateness is sickness. I understand that sickness is a good ground for an extension of time only if the said sickness is explicable.

Reading the applicant's affidavit, it is vivid that the applicant in paragraph 6 stated that the lateness of four years and five months to file a Notice of Appeal was due to intensive sickness, he claimed that he was attending medical treatments at Muhimbil Orthopedic Institute (MIO). The annexure IM-2, includes a report dated 29th July, 2020, the dates when the applicant attended clinics from the year 2015 to 2018. The records shows that in 11th July, 2016 when the impugned Judgment was delivered, the applicant did not attend clinic, therefore, from 11th July, 2016, the applicant or his counsel had time to file an appeal since the next clinic appointment was scheduled on 28th August, 2016. The applicant has attached medical documents; a

Medical Progress Report for Mr. Isaac Minja dated 29th March, 2021, a Clinic Identity Card, and a chic dated 2nd March, 2021. These three documents were issued in 2021, the large delay occurred between the days when the Judgment was delivered to the date of filing a Notice of Appeal. Therefore, this delay is out of the sequence of delay.

Again, the applicant in paragraph 7 stated that on 9th February, 2021, he was admitted at KCMC. To support his submission he referred this Court to the annexure IM-3. The KCMC documents are dated 13th February, 2021 and 12th February, 2021 the same is not connected with the delay occurred in 2016. In other words, the applicant has not accounted for the days of delay of one month and 12 days. Counting from 11th July, 2016 to 23rd August, 2016 and there is no any cogent evidence to prove that the applicant was admitted in the hospital instead the applicant was attending clinics.

Annexure IM-2 shows clearly that the applicant even when the matter was before this court for hearing in 2015 and 2016, the applicant was attending clinic, however, he managed to appear in court and testify. Therefore, the excuse of attending clinics cannot hold water. I fully subscribe to Mr. Paul and Ms. Jenifer's submissions that it was necessary for the applicant to account for every day of delay. Even a single day has to be accounted for

otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken. In the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) which had held that:-

“Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay.”

Equally, in the same case of **Bushiri Hassan** (supra), the court held:-

“Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.” Emphasis added].

Riding on the wisdom sprinkled from the cited decisions and the above findings, it is clear that the applicant has failed to account for every single day of delay.

Consequently, I hereby dismiss this application. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 31st October, 2022.



A.Z.MGEYEKWA

JUDGE

31.10.2022

Ruling delivered on 31st October, 2022 via video conferencing whereby Mr. Paul, learned counsel for the 1st Respondent and Ms. Elizabeth, learned counsel for the 2nd, 3rd and 4th Respondents were remotely present.




A.Z.MGEYEKWA

JUDGE

31.10.2022