

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

MISC. LAND APPLICATION NO. 301 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal for
Ilala District at Ilala in Land Application No. 343 of 2017)*

KAROLI ISHENGOMA APPLICANT

VERSUS

EQUITY BANK (TANZANIA) LTD 1ST RESPONDENT

SHAIBU SOZI SALUM T/A

NKINDA GENERAL MOTORS 2ND RESPONDENT

MAURINE MAPUNDA ISHENGOMA 3RD RESPONDENT

MOREEN KAROLI ISHENGOMA 4TH RESPONDENT

Date of last Order: 14/07/2022

Date of Ruling: 08/09/2022

RULING

I. ARUFANI, J

The applicant filed in this court the application at hand seeking for extension of time to file appeal in this court out of time to challenge the judgment and decree issued by the District Land and House Tribunal for Ilala District at Ilala (hereinafter referred as the tribunal) in Land Application No. 343 of 2017. The application is made under section 41 (2) of the Land Disputes Courts Act [Cap 216 R.E 2019].

The application is supported by an affidavit sworn by the applicant and is opposed by separate counter affidavits filed in the court by the first

and second respondents. On the part of the third and fourth respondents who said is the same person referred twice she informed the court she is not opposing the application hence she didn't file any counter affidavit in the present application.

When the application came for hearing the applicant appeared in the court in person and while the first respondent was represented by Mr. Caster Gerald Lufungulo, learned advocate, the second, third and fourth respondents appeared in the court in persons and unrepresented. When the application came for hearing the parties prayed and allowed by the court to argue the application by way of written submissions.

After the parties being allowed to argued the application as stated hereinabove the second, third and fourth respondents filed in the court their joint written submission and informed the court they are not objecting the application. They submitted that, they have been satisfied the applicant was delayed by sufficient reasons and prayed the court to grant the application. Therefore, the parties who in contest in this application are the applicant and the first respondent.

In supporting the application, the applicant stated in his submission that, the record of the matter reveals that, the application he filed in the tribunal against the respondents was dismissed on 10th October, 2019. He stated that, as he was aggrieved by the decision of the tribunal on 11th October, 2019 he applied for certified copies of the proceedings,

judgment, and decree of the tribunal for appeal purpose. He argued that, the tribunal delayed to supply him with the requested documents and caused him to write reminder letters (annexed in his affidavit as annexure AA3 and AA4) to the tribunal without success.

He went on submitting that, on 17th February, 2020 he wrote another reminder letter but as our country was facing COVID 19 pandemic the tribunal delayed to certify the said documents and supply the same to him until 5th February, 2021 is when he was supplied with the said documents. He argued that, at the time of being supplied with the stated documents the statutory period of time prescribed by the law for lodging his appeal in the court had already elapsed.

He argued that, after being supplied with the sought documents, he felt sick and on 2nd March, 2021 he went to Al-Jumaa Charitable Dispensary where he was undergoing treatment until 14th June 2021. He submitted that, failure to lodge his appeal in the court within the prescribe period of time of 45 days was due the delay by the tribunal to certify and supply to him the copies of proceedings, judgment, and decree and due to sickness.

The applicant submitted further that, it is a trite law that delay to be supplied with certified copies of proceedings, judgment and decree constitutes good cause for granting extension of time. To support his submission, he cited in his submission the cases of **Benedicto Mumello**

V. Bank of Tanzania, Civil Appeal No.12 of 2002, CAT At Dar es Salaam (unreported) and **Mary Kimaro V. Khalfan Mohamed**, [1995] TLR 202 where delay to be supplied with copies of proceedings, judgment and decree was said it contributed to the delay to appeal within prescribed period of time and was found is a sufficient reason for granting extension of time.

As for the reason of sickness the applicant submitted that, it is an established principle that illness of an applicant is a sufficient reason for granting extension of time. He argued that, the stated position of the law was enunciated by the Court of Appeal of Tanzania in the case of **Jehangir Aziz Abdulrasul V. Balozi Ibrahimu Abubakari & Bibi Sophia Ibrahimu**, Civil Application No. 79 of 2016 CAT at DSM (unreported) where it was stated illness of an applicant is sufficient to constitute good cause.

He also referred the court to the case of **Richard Mlagala and 9 Others V. Aikael Minja & 3 Others**, Civil Application No. 160 of 2015 CAT At DSM (unreported) where it was stated that, failure by the appellant to file written submission because of sickness was a good cause for granting extension of time. He based on the above cited authorities and submission to urge the court to find he has given sufficient reasons to warrant the court to exercise its discretionary powers to grant him extension of time to lodge his intended appeal in the court out of time.

In his reply the counsel for the first respondent stated that, they are aware that grant of extension of time is a discretion of the court but there are factors which must be taken into consideration before granting or refusing extension of time. He stated the factors to be considered are; (i) whether the applicant has accounted for the delay, (ii) the reason for the delay/sufficient cause, (iii) whether there is an arguable case such as, whether there is a point of law or illegality or otherwise of the decision sought to be challenged.

He argued in relation to the first factor that, the applicant has not accounted for each day of the delay. He stated that, the impugned judgment was delivered on 10th October, 2019 and it was ready for collection on 21st May, 2020 (as per annexure AA1) but the instant application was filed in the court on 24th June, 2021 which is almost one year from when the judgment and decree were ready for collection. He stated further that, paragraph 8 of the affidavit supporting the application states the applicant was supplied with the copies of the requested documents on 2nd March, 2021 and felt sick up to 14th June, 2021.

He submitted that, the allegation of sickness is an afterthought as the applicant was outpatient and he could lodge his application in the court while continuing with treatment as he was not hospitalized. He stated that, even if the applicant was attending treatment but still, he has not accounted for the period from 14th June 2021 to 24th June 2021 when

he filed the present application in the court which is almost 11 days. To support his arguments, he referred the court to the case of **Tanzania Revenue Authority V. Dawson Ishengoma**, Civil Appeal No. 126 of 2011, CAT at Mwanza (unreported) where it was stated that, there is no gainsay that in computing the period of limitation every single day counts.

He also referred the court to the cases of **Lyamuya Construction company Ltd V. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT at Arusha and **Yazid Kassim Mbakileki V. CRDB (1996) Ltd Bukoba Branch & another**, Civil Application No. 412/04 of 2018 (Both unreported) where the need to account for every day of delay was emphasized.

Moreover, he referred the court to the case of **Juma Nassir Mtubwa V. Namera Group of Industries Ltd**, Revision No. 251 of 2019 where the court quoted with approval the case of **Tanzania Fish Processors Ltd V. Christofer Luhangula**, Civil Appeal No. 161 of 1994 where it was stated that, the question of limitation of time is fundamental issue involving jurisdiction and it goes to the very root of dealing with civil claims.

He argued in relation to the second factor that, the applicant has not demonstrated any sufficient cause for the delay. He argued that, the reasons for the delay deposed at paragraphs 5, 6, 7, 8 and 9 of the

affidavit supporting the application is based on delay to be supplied with copies of judgment and decree and issue of sickness. He stated in relation to the issue of sickness that, the applicant has annexed medical documents which shows he was not hospitalised but he was advised to attend clinic in every week. He referred the court to the case of **Kayora Senyang V. Makacha Ogutu & Another**, Misc. Criminal Application No.23 of 2021 HC at Mwanza (unreported) where the court refused to accept sickness of the applicant who was not excused from duty or bedridden as a good cause for granting him extension of time.

He submitted further that, the term sufficient cause is not defined in the statute but there are various decisions where the Court of Appeal and this court states what amounts to good or sufficient reason for granting extension of time. He cited in his submission the case of **Kibo Hotel Kilimanjaro Ltd V. The Treasury Registrar** (Being the Legal Successor to PSRC) **& Another**, Civil Application No. 502/17 of 2020, (unreported) where the court quoted with approval its earlier decision made in the case of **Tanga Cement Company Ltd V. Jumanne D. Masangwa & Another**, Civil Application No.6 of 2001 where what amounts to sufficient cause was stated.

The counsel for the respondent argued in relation to the third factor relating to an important point or whether there is an arguable case such as point of illegality or otherwise of the decision sought to be challenged

that, looking in the affidavit from paragraph 1 to 11 there is no any legal point or illegality which has been pointed out in the decision which the applicant intends to challenge before this court. He referred the court to the case of **Salim Mohamed Marwa @ Komba & Another V. R**, Criminal Application No. 1 of 2020 where it was stated that, there must be an end to litigation, be it in civil or criminal proceedings. Finally, he prayed the application be dismissed in its entirety with costs for being unmeritorious and frivolous.

In his rejoinder the applicant reiterated what he argued in his submission in chief and insisted that, the respondent has not controverted the legal position stated by the Court of Appeal that delay in appealing caused by delay to get copies of documents for appeal purposes, constitute good and sufficient reason for granting extension of time. He added that, the delay of 11 days from 14th June 2021 to 24 June 2021 the applicant was preparing the necessary legal documents which were duly filed in this court on 24th June 2021.

After going through the rival submissions from both sides the court has found both sides are not at war that it is an established principle that the court has discretionary power to grant extension of time upon good cause being shown. That being the settled position of the law the issue to determine in this application is whether the applicant has shown good cause for being granted extension of time is seeking from this court. The

court has framed the above stated issue after seeing section 41 (2) of the Land Disputes Courts Act upon which the present application is made empowers the court to grant extension of time where good cause for granting the sought extension of time has been shown.

The court has found it is also a settled position of the law that, the term good cause stated hereinabove is not defined in any statute. However, in determining whether there is a good cause for granting extension of time there are number of factors which have been laid down by our courts in numerous cases. One of the cases where the stated factors were considered is the case of **Jacob Shija V. M/S Regent Food & Drinks Limited & Another** Civil Application No.440/08 of 2017, CAT At Mwanza (unreported) where it was held that: -

"What amount to good cause cannot be laid by any hard and fast rule but are dependent upon the fact obtaining in each particular case, that is each case will be decided on its own merits of course taking into consideration the question, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been accounted, the reason for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant".

The factors stated in the above quoted case are almost similar to the principles stated in the cases of **Tanga Cement Company Limited** and

Lyamuya Construction Company Limited, (supra) cited in the submission of the counsel for the first respondent where some principles to be considered in granting extension of time were stated to be as follows: -

"(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 and (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

While being guided by the factors or principles stated in the aforecited cases the court has found the applicant deposed in his affidavit that, the reasons for his delay to appeal within the time prescribed by the law are two. He deposed at paragraph 7 of his affidavit that, the first reason is that he delayed to be supplied with copies of proceedings, judgment and decree by the tribunal and he deposed at paragraph 8 of his affidavit that, the second reason is that he became sick at the time he was required to lodge his appeal in the court.

Starting with the reason of delay to be supplied with the copies of proceedings, judgment and the decree the court has found as rightly argued by the applicant and not seriously contested by the counsel for the first respondent the position of the law as stated in number of cases

is now settled position of the law that delay to be supplied with copies of judgment and decree is a sufficient reason for granting extension of time.

The above stated position of the law can be seen in the case of **Benedict Mumello** (supra) cited in the submission of the applicant where the Court of Appeal stated that, delay to be supplied with copies of proceedings and judgment contributed to the delay to appeal within the prescribed period of time and held the delay was with sufficient cause. It was also held in the case of **Mary Kimaro** (supra) that, a delay to appeal caused by the applicant's delay to get copies of documents to enable him or her to appeal, constitutes a good cause when it comes to extension of time.

While being guided by the position of the law stated hereinabove the court has found there is no dispute that the decision the applicant intends to appeal against was delivered on 10th October, 2019. The applicant deposed at paragraph 3 of his affidavit that, after the judgment being delivered, on 11th October, 2019 he wrote a letter to the tribunal seeking to be supplied with copies of proceedings, judgment and decree. He deposed further at paragraphs 4 and 5 of his affidavit that, he continued to write reminder letters on 11th December, 2019 and 17th February, 2020 to the tribunal without success.

The court has found the applicant deposed further at paragraph 6 of his affidavit that, after writing the reminder letter of 17th February,

20120 our country was faced with Covid 19 pandemic outbreak which caused the tribunal to delay to supply him with the requested documents. He stated it was until 5th February, 2021 is when he was supplied with the stated documents. After considering the stated period of time from 10th October, 2019 when the impugned decision was delivered up to 5th February, 2020 when the applicant was supplied with the sought documents the court has found the applicant cannot be blamed for failure to file the appeal in the court within the stated period of time.

The above view of this court is getting support from the case of **The Registered Trustees of Marian Faith Healing Centre @ Wanamaombi V. the Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007, CAT (Unreported) cited in the case of **Valerie Mcgivern V. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019 where it was stated that, the period when the applicant was waiting for the copies of documents he wanted for appeal purposes is supposed to be excluded in computing limitation of time.

The court has also found the counsel for the first respondent stated the copies of documents sought by the applicant were certified and became ready for collection from 21st May, 2020 but the application was filed in the court on 24th June, 2021. The court has found that, although it is true that the copies of judgment and decree annexed to the affidavit of the applicant shows they were certified on the mentioned date but to

the view of this court the applicant cannot be punished for the period he was waiting to be supplied with the mentioned documents.

The court has come to the stated finding after seeing the applicant acted immediately after the judgment being delivered to apply for the copies of proceedings, judgment and decree as he wrote a letter of seeking for the stated documents on 11th October, 2019 which was one day after the delivery of the judgment. He went on reminding the tribunal about his request by writing reminder letters on 11th December, 2019 and 17th February, 2020. When the Court of Appeal was dealing with similar issue in the case of **Valerie McGivern** (supra) it stated that: -

"Suffice to say, section 19 (2) of LLA and the holding in the decision cited above (Wanamaombi's case) reinforce the principle that, computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced the appellant obtains a copy of the decree or order appealed by excluding the time spent in obtaining such decree or order. However, it must be understood that section 19 (2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of appeal."

Since the applicant in the present application has clearly demonstrated he requested for the copies of the proceedings, judgment and decree in writing and the same were supplied to him on 5th February, 2021 the period from when the judgment was delivered until when the

applicant was supplied with the requested documents is supposed to be excluded from the date of being required to lodge his appeal in the court.

Coming to the period from 5th February, 2021 when the applicant had already been supplied with the copies of judgment and decree of the tribunal the court has found the applicant deposed at paragraph 8 of his affidavit that, he felt sick and on 2nd March, 2021 he went to Al Jumaa Charitable Dispensary where he started treatment until 14th June, 2021.

The court has found it was stated in the case of **Shembilu Shefaya V. Omary Ally**, [1992] TLR 245 that, in order for sickness to be accepted as a ground for delay there must be evidence to show the applicant was sick and incapable of taking the step, he was required to take throughout the alleged period of sickness.

The court has found that, although it was not stated clearly in the affidavit of the applicant and in his submission as to whether he started being sick from when he went to the dispensary or from when he was supplied with the documents requested for appeal purpose but he has annexed medical documents in his affidavit to establish he was undergoing treatment from 2nd March, 2021 until 14th June, 2021. The court has found it is true as rightly argued by the counsel for the first respondent that the medical documents annexed to the applicant's affidavit shows he was an outpatient and he was not hospitalized.

The court has found that, although it is true as argued by the counsel for the first respondent that the applicant was not hospitalized and he was an outpatient but there is no any evidence showing he was in a position of being able to prepare and lodge his appeal in the court in the period he was undergoing treatment. To the contrary the court has found the medical documents annexed to the applicant's affidavit shows he was advised among other things to avoid stress and heavy duties for the time he was undergoing treatment.

The court has gone through the case of **Kayora Senyange** (supra) cited to the court by the counsel for the first respondent where a reason of sickness was refused by the court to be sufficient reason for grant extension of time but find the cited case is distinguishable from the present case. The court has arrived to the above finding after seeing that, while in the cited case the applicant had not been exempted from duty but the medical documents annexed in the affidavit of the applicant in the present application shows the applicant was exempted from heavy duties for the period of time, he was undergoing treatment. Therefore, the argument by the counsel for the first respondent that the reason of sickness of the applicant is not a sufficient reason for granting him the order is seeking from this court is without merit.

The court has found the counsel for the first respondent has argued the applicant has not accounted for the period from 14th June, 2021 when

he finished the treatment until 24th June, 2021 when the instant application was filed in the court. The court has found as stated in the case of **Lyamuya Construction Company Ltd** (supra), the applicant was required to account for all the period of the delay. However, the court has found that, although it is true that the applicant did not state anything in relation to those days in his affidavit and submission in chief but he stated in his rejoinder that, the stated period of time he was preparing and filing the instant application in the court. To the view of this court the stated period of ten days is not inordinate delay for a layperson like the applicant to prepare and file an application like the one at hand in the court.

All of the above stated finding caused the court to come to the settled finding that, the applicant has managed to satisfy the court he has managed to account for all period of the delay that he was prevented by sufficient reasons to lodge his appeal in the court within the period of time prescribed by the law. In the premises the application of the applicant is hereby granted and the applicant is given fourteen (14) days from today to file his intended appeal in the court. Each party to bear his or her own costs. It is so ordered.

Dated at Dar es Salaam this 8th day of September, 2022

I. Arufani

I. Arufani

JUDGE

08/09/2022



Court:

Ruling delivered today 08th day of September, 2022 in the presence of all parties in persons save for the first respondent who is well aware the matter is coming for ruling today. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

I. Arufani

JUDGE

08/09/2022