

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

MISC. LAND APPLICATION NO. 212 OF 2022
(Arising from Land Appeal No.87 of 2021)

ZUBERI SEIF KIMBUKE.....APPLICANT

VERSUS

GRACE CHARLES MAGOA.....RESPONDENT

Date of Last Order: 14.09.2022
Date of Ruling: 31.10.2022

RULING

V.L. MAKANI, J

This is an application by ZUBERI SEIF KIMBUKE for extension of time to file an application for review. The application is made under section 41(2) of Land Disputes Courts Act CAP 216 RE 2019, sections 78(1)(b) and 95 of the Civil Procedure Code CAP 33 RE 2019 (the CPC). The application is supported by the affidavit sworn by the applicant herein. The respondent filed a counter affidavit opposing the said application.

The application was argued by way of written submissions. Mr. Hassan Tarimba Abasi, Advocate filed submissions on behalf of the applicant. He said the decision in Land Appeal No. 87 of 2011 was delivered on 25/10/2021. He said 7 days thereafter on 02/11/2021

before the expiry of the time to file review the applicant fell sick, and his body started to swell and was diagnosed with Congestive Cardiac Failure according to the medical certificate (**Annexure AP1 to the affidavit**). Mr. Tarimba said after the applicant recuperated that is when he filed this application for review. He said the applicant could not file the application on time and this was not out of negligence but rather it was caused by uncontrolled condition as he was fighting for his life. He said the court may grant extension of time if sufficient cause is given as is in the case of **Michael Lessan Kweka vs. John Kiliafye [1997] TLR 152 (CA)**.

The submissions in reply were filed by Glory Sandewa, Advocate, Legal Aid, Tanzania Women Lawyers Association (**TAWLA**). She said after the delivery of the judgment on 25/10/2021 the applicant had an opportunity to file the application for review or any other remedy, but he did not do so. She said the respondent proceeded with execution which has duly been completed. She said the applicant has failed to account for the delay because he has not said when he started being sick and from the date of when the judgment was delivered up to the date of this application it is more than 9 months. She prayed for the application to be dismissed .

In rejoinder Mr. Tarimba reiterated what he stated in the submissions in chief.

I have gone through the submissions, the Chamber Summons, the affidavit and counter affidavit filed herein. The main issue is whether the application has merit.

It is trite law 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 the said discretion (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported). 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 guidelines for grant of extension of time including that the applicant must account for all the delay and the said delay must not be inordinate.

In this application the main reason for the delay is that the applicant got sick immediately after the delivery of the judgment in Land Appeal No. 87 of 2021 on 25/10/2021. The medical certificate/chit (**Annexure AP1**) which is not very eligible, shows that the applicant was in hospital only one day on 02/11/2021. There is no further explanation as to what transpired thereafter. There is also no explanation of what transpired after the delivery of the judgment on 25/10/2021 to 02/11/2021 when the applicant went to the hospital. It is apparent therefore that the applicant has not given an account of the delay most importantly after the treatment on 02/11/2021 up to when this application was filed on 05/05/2022, about 6 months down the line and 7 months after the delivery of the judgment. This is an inordinate delay, and in terms of the case of **Lyamuya Construction Company Limited** (supra) the applicant has failed miserably to account for the delay.

The respondent in her submissions pointed out that execution has been concluded. But unfortunately, this information was from the bar, the affidavit was silent on this as such there is no proof to convince the court of the said averment.

For the reasons advanced hereinabove, it is clear that the applicant has failed to advance sufficient reasons to warrant this court to exercise its discretion to grant extension of time to file the application for review. Consequently, the application is without merit, and it is hereby dismissed. Considering the circumstances of the case there shall be no order as to costs.

It is so ordered.




V.L. MAKANI
JUDGE
31/10/2022