

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO. 261 OF 2022

(Arising from the High Court of Tanzania at Dar es Salaam in Land Appeal No. 278 of 2021, Originating from Land Application No. 488 of 2020 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala)

KHADIJA SAID MTWANJE.....APPLICANT

VERSUS

1. NATIONAL MICROFINANCE BANK PLC.....1ST RESPONDENT

2. ATHUMANI WAZIRI JUMBE.....2ND RESPONDENT

RULING

3rd & 16 November, 2022

L. HEMED, J.

KHADIJA SAID MTWANJE, the applicant herein, lodged the present Application under Section 11 (1) of the Appellate Jurisdiction Act, (Cap 141 RE 2019] and Rule 10 of the Court of Appeal Rules, 2009 seeking, among others, for orders: -

- "1. *That, this Honorable Court be pleased to extend the time for filing notice of intention to appeal to the Court of Appeal of Tanzania from a judgment of the High Court of Tanzania at Dar es Salaam dated 30th March, 2022 before Hon. A. Z. Mgeyekwa, J. (sic).*



2. *That, the Honorable Court be pleased extend the time for filing and serving a letter requesting to be supplied with a copy of proceedings (sic).*
3. *Costs of this application be in the cause (sic)".*

This 1st Respondent, National Microfinance Bank PLC, Countered the application through the Affidavit deponed by one ELIZABETH JOAKIM KIFAI. The 2nd Respondent one Athuman Waziri Jumbe never appeared, nor he did counter the Application despite various services attended to him including substituted service by Publication in Mwananchi Newspaper dated 6th October, 2022. Following the non-appearance of the 2nd Respondent, this court ordered the application to proceed exparte against him.

During hearing which was conducted orally, the applicant appeared in person while the 1st respondent was in the service of Ms. Kulwa Shilema, learned advocate. The affidavit deponed by the Applicant one HADIJA SAID MTWANJE in support of the application is to the effect, that the applicant could not file Notice of Appeal and a letter requesting for a copy of proceedings in time because she was seriously sick. According to the applicant, she has been disturbed by severe headache vision problems, irregular heart beat and chest pain for a long time but she



had never opted to go for medical checkup rather she had been resorting to the use of pain killer medicines.

It was stated by the applicant that she usually travels to Kaliua, Tabora for business purposes. She asserted that, at the mid of April, 2022, she travelled to Kaliua, but while there her health condition changed suddenly. According to the applicant, she felt severe headache and high fever, hence she was taken to Kaliua District Hospital where she was diagnosed and found with hypertension and severe Malaria. She was admitted and discharged after four days.

It was also deponed by the applicant that she was supposed to attend to the referral hospital for further medical checkup. At the time when the applicant was required to attend at the said hospital for regulation of blood pressure, she was unable to travel for long distance or make any hard work and was advised not to be engaged in any activities that would disturb her blood pressure. She came back in Dar es Salaam on 8th May 2022 after advice of the medical practitioners.

Submitting on behalf of the 1st respondents, Ms. Kulwa Shilema, learned advocate stated that the application at hand was lodged on 25th May 2022 after 27th days from the deadline. The applicant did not account for each day of delay.

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Ms. Shilema stated further that the applicants reasons for the delay is sickness. However, in her sicksheet annexed to the affidavit it is not stated if the sickness she alleged to leave suffered prevented her from lodging the application. It was also submitted by Ms. Shilema that the sicksheet shows that the applicant was admitted to the hospital on 12th April, 2022 and was discharged on 17th April 2022. When she was discharged there were 11 days to file the application, however, the same have not been accounted for by the Applicants. She finally submitted that the sicksheet do not show if the applicant was exempted from duty. She asked the court to dismiss the application.

Having heard the submissions from both parties, it is now my turn to decide as to whether good cause has been shown for this court to extend time for filing notice of intention to appeal to the Court of Appeal of Tanzania from a Judgment of this Court dated 30th March, 2022, Hon. Mgeyekwa J.

In this case, the sole reason for the application is the sickness of the applicant. The applicant supported her asserssion by two medical shits. Nonetheless, both medical chits do not indicate that the applicant was admitted in hospital. Again, the two medical documents do not indicate that the applicant was excused from duty to warrant her fail to

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travel back to Dar es Salaam to attend her case. I do agree with Hon. Utamwa J, who in **Jasson Mwambola v. Ahobokile Mwansasu**, Misc. Land Appeal No.18 of 2020 (HC-Mbeya), stated thus; -

"It is common ground that, Illness is a common Phenomenon of human life. But not every disease or illness incapacitates a human being to perform any duty or activity".

The medical shits at issue only shows that the applicant was sick but they do not show if the applicant's illness incapacitated her from performing any duty or activity including travelling.

In **Lyamura construction Company Ltd vs. Board of Registered Trustee of young Women and Another**, Civil Application No. 2 of 2010 (unreported), the Court of Appeal of Tanzania insisted that in order for the Court to grant extension of time, the Applicant must account for all the period of delay. In this case, apart from the applicant's failure to prove that her sickness prevented her from lodging notice of intention to appeal in time, the record shows that the applicant attended hospital for the last time on 17th April 2022.

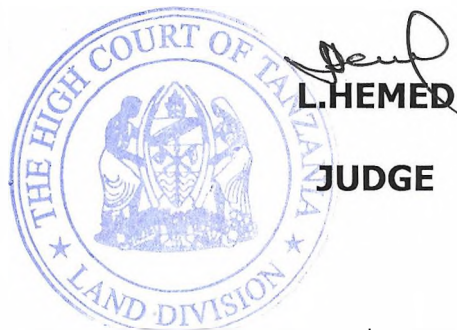
From the said date to the deadline, there were 11 days remained for her to lodge her notice. However, the said days have not been



accounted for to warrant this court consider whether to grant the application.

From the foregoing, it is evident that the application falls short of merits. I do hereby dismiss the entire application with no orders as to cost. It is so ordered.

DATED at DAR ES SALAAM this 16th November 2022.



Court: Ruling is delivered this 16th day of November, 2022 in the presence of the Applicant appearing in person and Ms. Joyce Shayo, learned advocate for the Respondent. Right of Appeal fully explained.

L. HEMED
JUDGE
16/11/2022