

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC LAND CASE APPL NO. 548 OF 2022**

MARRY NGOLEAPPLICANT

VERSUS

MRS CECILIA MWANDAMBO1ST RESPONDENT

MR. HAMIS MWANDAMBO.....2ND RESPONDENT

RULING

29TH November, 2022

14th December, 2022

L. HEMED, J

On the 5th day of August, 2022 this Court (M. N. Ntandu- DR) delivered ruling on the Bill of Costs No. 19 of 2021 ordering the present applicant (the judgment debtor in the said Bill of Costs) one MARY NGOLE, to pay the Decree holders Mrs. Cecilia Mwandambo and Mr. Hamisi Mwandambo the amount of Tshs. 2,390,000/= being the costs they incurred in prosecuting Extended Land Appeal No. 28 of 2021.

The applicant herein was aggrieved by the said ruling, however, she could not lodge reference because she was out time. In the present application, the applicant is seeking for an order among others that this honorable court be pleased to grant an order for extension of time to file

reference. The respondents opposed the application by filing the joint counter affidavit which was presented for filing on the 3rd day November, 2022.

On 7th day of November, 2022, it was directed by this Court that the application be disposed of by way of written submissions. Submissions in chief were to be filed by 14/11/2022, Reply submissions by 21/11/2022 and Rejoinder submissions by 20/11/2022. It was only the applicant who filed her submissions. This ruling thus, will be based mainly on the submissions of the applicant.

In the submissions and the affidavit, the applicant has stated that at the time when the ruling was delivered, she was already sick and admitted at Muhimbili hospital Dar es Salaam, from 29th July, 2022 with neuro problem arising out of older age. She asserted further that when she was discharged on 29th August, 2022, she was still feeling severe pain and was advised not to take a walk until at least a lapse of 7 days which went until 4th September, 2022.

The applicant submitted further that on lapse of 7 days she was somehow feeling better though it was Sunday 4th September, 2022 hence,

on Monday 5th September, 2022 she went to Court where she was informed by the Court Clerk that ruling was delivered on 26th July, 2022. On 6th September, 2022 she approached WILAC for legal aid and was advised to file a reference, but since she was late, WILAC advise^d her to apply for extension of time.

It was submitted further that on 7th September, 2022 the application was prepared and on 8th September, 2022 she collected the application and presented to the Court registry for admission and registration. She stated that the delay was not deliberate as was due to sickness.

Having gone through the submissions and the affidavits, let me now determine whether the application has merits. The main reason stated by the applicant in seeking for extension of time is sickness. According to the affidavit deponed by one Mary Ngole, the applicant was admitted at Muhimbili Hospital from 20th July, 2022 to 29th August, 2022 for spinal/ neuro treatment arising from older age. She was discharged on 29th August, 2022 where she was advised not to take a walk or move until the lapse of at least seven (7) days.

After the lapse of the said seven days, on 5th September, 2022 she went to Court and collected the ruling. On the 6th day of September, 2022, she approached WILAC for legal aid where the impugned ruling was translated to her. Because she was out of time, on 7th September, 2022 the application was prepared and was presented for filing on the 8th day September, 2022.

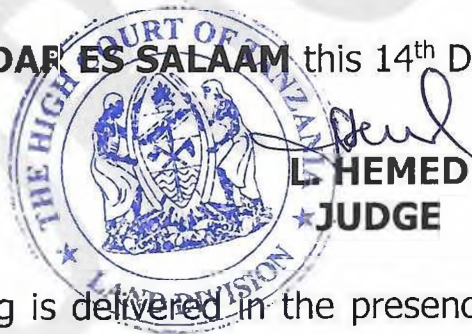
Let me start with the point of sickness of the applicant. In the present case, the applicant has deponed and proved that she was admitted at Muhimbili National Hospital from 20th July, 2022 to 29th August, 2022. In the case of **Alasai Josiah (suing by his attorney Oscar Sawuka) vs Lotus Valley LTD**, Civil Application No. 498/12 of 2019(unreported) the Court was of the view that sickness is one of the grounds for extension of time. It stated thus; "*sickness is beyond human control and therefore no body will fault the applicant for being sick.*" With regard to the present case, I am of the view that we should not fault the applicant for being sick as it was not out of her will to become sick.

I have also noted from the affidavit deponed to support the application that, the applicant has managed to account for each day of the

delay pursuant to the principle laid down by the Court of Appeal of Tanzania in **Lyamuya Construction Company Limited vs. The Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2020 and in **Zuberi Nassoro Moh'd vs Mkurudari Zanzibar**, Civil Application No. 93/15 of 2018 that the days delayed should be accounted one after the other. In the present application the applicant has well accounted for each day of the delay.

From the foregoing, this application has to succeed. I do hereby grant the application without costs to the effect that reference should be filed within 14 days from the date of delivery of this ruling. Order accordingly.

DATED at DAR ES SALAAM this 14th December 2022.



COURT: Ruling is delivered in the presence of Mr. Hussein Sued, learned advocate for the applicant. Right of appeal explained.

