

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO.62 OF 2020**

(Arising from Land Case No.112 of 2019 in the  
High Court)

**ALLY ABDALLAH SALEH ..... APPLICANT**

**VERSUS**

**JUMA LYIMO ..... RESPONDENT**

**RULING**

*Date of last Order: 19.04.2022*

*Date of Ruling: 22.04.2022*

**A.Z.MGEYEKWA, J**

In this application, the Court is being asked to extend the time within which to file an application for review of its decision in Land Case No.112 of 2019 in which Hon. Masoud, J declared the applicant the lawful owner of the suit plot. The application has been preferred under the provisions of section 14 (1) of the Law of Limitation Act, Cap. 89[R.E 2019] and section 95 of the Civil Procedure Code Cap.33 [R.E 2019]. The application is supported by an affidavit deposed by Ally Abdallah Saleh, the applicant. 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 deposed by Juma Lyimo, the respondent.

The application was placed before me for hearing on 19<sup>th</sup> April, 2022. The applicant enlisted the legal service of Mr. Edward Mkungana, learned counsel and the respondent appeared in person, unrepresented.

The applicant's Advocate was the first to kick the ball rolling. He urged this court to adopt the applicant's application and form part of his submission. Mr. Edward submitted that there was a Land Case No. 112 of 2019 pending before this court and the judgment was delivered on 19<sup>th</sup> August, 2021 in favour of the applicant. Mr. Edward submitted that when this court pronounced the judgment the applicant was hospitalized from 21<sup>st</sup> July, 2021 until 15<sup>th</sup> February, 2022 thus the applicant find himself out of time to file his application for review within time.

On the strength of the above submission, Mr. Edward urged this court to grant the applicant's application to file a review out of time as per section 14 (1) of the Law of Limitation Act, Cap. 89[R.E 2019] and section 95 of the Civil Procedure Code Cap.33 [R.E 2019].

In his reply, the respondent forcefully objected to the applicant's application for an extension of time to file a review. He urged this court to adopt his counter affidavit to form part of his submission. The respondent contended that in Land Case No. 112 of 2019, the applicant was represented by Ms. Halima Mohamed who was in a better position to file the application. Thus the applicant is not conversant with the matter. The respondent went on to submit that the applicant has not stated good reasons for his delay to file the application for review.

Having gone through the submission of both sides for and against the application. The issue which is the bone of contention in this Application, and on which the parties have locked horns, is *whether the applicant has adduced sufficient reasons to warrant this court to allow her application.*

I feel inclined to state at the outset of the determination of this matter that it is trite law that in an application for an extension of time the applicant is required to account for each day of delay In the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019.

Encapsulated in the applicant submission and per the applicant's affidavit, the ground for his delay is sickness. The applicant has tried to move this court by attaching documents to prove his sickness. The applicant in paragraph 3 stated that he failed to file the application for review because he was hospitalized.

I am cognizant of the position of law that sickness is a good cause in case a party has failed to appear in court. In the case of **Emanuel R. Maira v The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported) the court held that:-

*"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike."*

Equally, the principle of law is that a person who alleges the existence of certain facts is required to prove the same. Therefore, where sickness is pleaded as a ground for failure to take the required action, it must be proved by medical proof. In our case, the applicant wanted to show that he was admitted to the hospital on 21<sup>st</sup> July, 2021, and discharged on 15<sup>th</sup> February, 2022. However, the applicant did not tender any authenticity documents to prove his sickness. The purported attached documents from Mkuranga District Hospital are just copies, one document lacks signatures of the

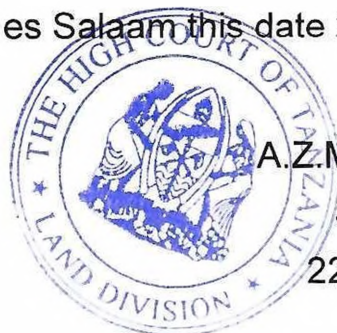
authorized person and office stamped. The Clinical Notes is an uncertified copy. In absence of original documents or certified copies, office stamps and signatures means there is no proof of endorsement. In the instant proof of this relevance is wanting. I have considered the fact that the respondents' contested the alleged sickness of the applicant.

The onus of proof was upon the applicant to prove that he delayed to file the application for review within time because he was hospitalized. This being the case, the applicant's affidavit and his submission in chief remains just an assertion that is devoid of proof which this court cannot act on.

In the upshot, I find that the applicant has failed to state sufficient cause to warrant this court to grant his application. Consequently, I hereby dismiss this application with costs.

Order accordingly.

Dated at Dar es Salaam this date 22<sup>nd</sup> April, 2022.



A.Z.MGEYEKWA  
JUDGE  
22.04.2022

Ruling delivered on 22<sup>nd</sup> April, 2022 via audio teleconference whereas the respondent was remotely present.



A.Z.MGEYEKWA

JUDGE

22.04.2022