

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 99 OF 2022**

*(Originating from Land Application No. 625 of 2020, Misc. Land Application No. 805 of 2018 both of High Court of Tanzania -Land Division, Extended Land Appeal No. 84 of 2019 from Resident Magistrates Courts of Dar es Salaam at Kivukoni. Originating from Land Application No. 31 of 2016 of the District Land and Housing Tribunal for Pwani at Kibaha)*

**AMINA ABDALLAH MLANG'AMBA ..... APPLICANT**

**VERSUS**

**HAMADI ALLY YUSUPH ..... RESPONDENT**

**RULING**

Date of Last Order: 28.04.2022

Date of Judgment: 28.04.2022

**A.Z.MGEYEKWA, J**

I am called upon in this matter to decide whether this court should exercise its discretion under section 78 (1) (a) of the Civil Procedure Code Cap.33 [R.E 2019] to extend the time within the applicant to lodge an application for review against the decision of this court in Misc. Land Application No.625 of 2020. The application is supported by an affidavit deposed by Amina Abdallah Mlang'amba, 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 Hamadi Ally Yusuph, the respondent.

When the application was coming for hearing on 28<sup>th</sup> April, 2022. The applicant and the respondent appeared in person, unrepresented.

The applicant was the first to kick the ball rolling. She was brief and focused. She urged this court to adopt her affidavit to form part of his submission. She submitted that she could not file her written submission within time because the representative of the applicant was sick. She claimed that to date she has not received a copy of a judgment thus she found herself out of time to file the instant application for review.

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 the applicant was aware that this court consented to parties to argue the application by way of written submission. He submitted that he took initiative to inform the applicant about the matter in court but she did not take it seriously. The respondent confirmed that to-date they have not received a copy of the judgment.

In her rejoinder, the applicant had nothing new to rejoin. She rather urged this court to grant his application.

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.*

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously based on the material placed before the court for its consideration. The law required the applicant not only to demonstrate reasons for the delay but also must account for each day of delay in taking a particular step in the proceedings. There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v Amos David Kassanda & 2 others**, Civil Application No.48/17/2018 and the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been*

*sufficiently established that the delay was with sufficient cause.”*

Similarly, the Court of Appeal of Tanzania in the cases of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) which was delivered in May, 2019, and the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), it held that:-

*“Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay.”*

Encapsulated in the applicant submission and per the applicant's affidavit specifically paragraphs 2,3,4 the ground for his delay is sickness and that she has not received a copy of judgment hence she was not in a position to file her submission within time. The applicant has tried to move this court by attaching a Hospital Chic from Chalinze Healthy Center to prove that she falls sick. Having gone through the submissions from both sides it appears that the applicant failed to comply with the court order dated 8<sup>th</sup> April, 2021. 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 the representative of the applicant went to the Healthy Center on 8<sup>th</sup> April, 2021, the day when she was supposed to file the submission. As per her affidavit, the applicant had time to file the said submission after being treated. I am saying so because the dateline to submit the submission was on 13<sup>th</sup> April, 2021. The applicant did not account for the days of delay from 9<sup>th</sup> April, 2021 to 13<sup>th</sup> April, 2021. was admitted to the hospital on 21<sup>st</sup> July, 2021, and discharged on 15<sup>th</sup> February, 2022.

The applicant also complained that she wrote a letter to this court requesting a copy of the Judgment. I have scrutinized the said letter and noted that the letter was not dated but was received by this court on 4<sup>th</sup> November, 2021.

Additionally, the applicant did not indicate in her affidavit when she wrote the said letter and when the Land Application No. 625 of 2020 was dismissed for this court to determine the extent of the delay. It is trite law

that any delay even of a single day matters, and it has to be accounted for, as it was held in the case of **Bushiri Hassan vs Latifa Lukio Mashayo Civil Appeal No.3 of 2007 (unreported)** where the court held that: -

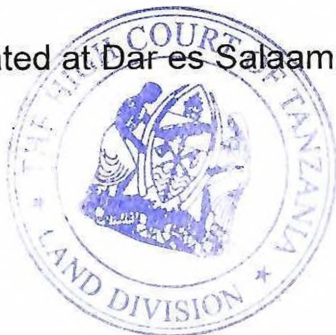
*"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"*

Applying the above authority, it is clear that the applicant has not accounted for each and every day of delay to move this court to grant the application.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by granting the applicant's application. Thus, this application is with no merit, I dismiss the application without cost.

Order accordingly.

Dated at Dar es Salaam this date 28<sup>th</sup> April, 2022.



A.Z. MGEYEKWA

JUDGE

28.04.2022

Ruling delivered on 28<sup>th</sup> April, 2022 in the presence of both parties.



A.Z. MGEYEKWA

JUDGE

28.04.2022