

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 106 OF 2022**

*(Arising from Mkuranga District and Housing Tribunal in Land Application No.
62 of 2020)*

SENGA OMARY KAWAMBWA APPLICANT

VERSUS

OTHY BLUE INTERNATIONAL COMPANY LTD 1ST RESPONDENT

SADAT HAMZA CHEGEKA 2ND RESPONDENT

URBAN & RURAL ENGINEERING SERVICE LTD 3RD RESPONDENT

RULING

Date of last Order: 25.05.2022

Date of Ruling: 27.05.2022

A.Z.MGEYEKWA, J

This Court is called upon to grant an extension of time within which to file an appeal out of time against the decision of the District Land Housing Tribunal in Land for Mkuranga in Land Application No. 52 of 2020. The application, preferred under the provisions of section 41 (2) of the Land

Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deposed by Senga Omary Kawambwa, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondents have firmly opposed the application by filing counter-affidavits.

When the matter was called for hearing on 19th May, 2022, the applicant had the legal service of Justin, Mr. Othman Adam, represented the 1st respondent, Mr. Winfred Busere appeared for the 3rd respondent and the 2nd respondent appeared in person.

In his submission, Mr. Justin urged this court to adopt the affidavit and form part of his submission. He submitted that the applicant delayed to obtain a copy of the judgment. He stated that the judgment was delivered on 24th December, 2021 and the applicant received the copy on 17th January, 2022. To bolster his submission he referred this court to the attached documents annexure S2. He further submitted that thereafter, the applicant lost her mother, after the funeral, the applicant fall sick, she was suffering from a stroke. Fortifying his submission he referred this court to the attached medical report (annexure S3).

He further submitted that the applicant had to attend medical treatment, she was under supervision for six weeks, and thereafter she was able to

lodge the instant application. Supporting his submission, the counsel for the applicant referred this court to the decisions in the **Samson Kishosha v Charles Kingongo Gabba** [1990] TLR 133 HC and **Michael Lessani Kweka v John Eliafye** [1997].

The counsel for the applicant continued to submit that there is greater success in the intended appeal as the District Land and Housing Tribunal failed to consider the sale agreement between the applicant and the 3rd respondent.

In conclusion, the learned counsel for the applicant urged this court to grant the applicant's application.

In his reply, the 1st respondent had no objection to the applicant's application.

The 2nd respondent opposed the application, he claimed that he is not a party to the dispute.

On his side, the 3rd respondent strenuously opposed the application. He claimed that all what the applicant said are untruth since they are neighbors and he has not heard that the applicant fall sick and the alleged fact that she buried her mother. Insisting, he claimed that the applicant is diverging her duties to pay her debts. He urged this court not to grant the application.

In his rejoinder, the learned counsel for the applicant reiterated his submission in chief. He added that the applicant and the 3rd respondent are not neighbours. Insisting that the applicant was telling liars since was not sick and they did not hear whether she buried her mother. He urged this court to grant the applicant's application.

After the submissions of the learned counsel for the applicant and the respondents. The ball is now in on the side of the Court. The parties' rival submissions raise one key question. This is as to *whether or not the application has passed the threshold for its grant.*

I wish to start by underscoring, first, that it is settled law that applications of this nature will only succeed upon the applicant showing reasonable or sufficient cause for the delay. This is a requirement of section 14 of the Law of Limitation Act, Cap. 89 under which the present application has been made. To grant or not to grant extensions is within the unfettered discretion of the Court. This unfettered discretion is only subject to the obvious fetter of all discretions; that is, it must be exercised judicially the same was held in the cases of **Lalji Gangji v Nathoo Vassanjee** [1960] 1 EA 315 and **Noormohamed Abdulla v Ranchhodbhai J. Patel & another** [1962] 1 EA 447.

Moreover, in order to establish that the delay was with sufficient cause, the applicant must not only demonstrate reasons for the delay but also satisfactorily declare and explain the whole period of delay to the Court. In other words, the applicant must account for each day of delay. The substance of the matter and, in this respect, the legal position is that, an extension of time, being an equitable discretion, its exercise must be judicious. As stated in numerous decisions, such discretion must be on a proper analysis of the facts, and application of law to facts, the grant of which is done upon satisfaction by the applicant through the presentation of a credible case upon which such discretion may be exercised.

Encapsulating the foregoing position, the Court of Appeal of Tanzania made the following position 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."

Guided by the above authority means that to justify her delay, the applicant is duty bound to account for the days of delay. I have perused the affidavit and submission made by the applicant's counsel it is shown that the applicant on paragraph 7 stated that she had to attend the funeral of her mother however there is no detailed as to when the deceased passed away and when the funeral took place, therefore this ground cannot hold water. On paragraph 6, the applicant complained that the tribunal issued a copy of judgment on 24th December, 2021 and he obtained the copies on 17th January, 2022.

Counting the days she was still within time to file an appeal. The days of filing an appeal ended on 3rd February, 2022 and she filed the instant application on 13th March, 2022. Reading the applicant's affidavit it shows that before the lapse of time she fall sick and to support her allegations she attached a medical report. See paragraph 8 of the applicant's affidavit.

I would like to observe that as amply submitted by the applicant's Advocate, he has convinced this Court to find that the applicant's delay was due to his sickness which is explicable and excusable as stated in the case of **John David Kashekya v The Attorney General**, Civil Application No. 107 of 2012 CAT (unreported). The Court of Appeal of Tanzania held that: -

"Sickness is a condition which is experienced by a person who is sick. It is not a shared experience. Except for children which are yet in a position to express their feelings, it is the sick person who can express his/her conditions whether he/she has the strength to move, work and do whatever kind of work he is required to do."

Similarly in the cited case of **Richard Mipawa Manara v FINCA Tanzania Ltd & Another**, Land Appeal No. 51 of 2021 my learned brother Hon. Kisanya, J held that:-

"... sickness is a good cause since it not a choice of a human being but a cause over which one has no control".


In the instant application, the medical report state that the applicant's from 17th January, 2022 was kept under observation for six weeks which ended on 6th February, 2022 the report was prepared on 28th February, 2022. Counting the days from 28th February, 2022 from the date when the Doctor allowed the applicant to resume to her normal daily activities to the date when she lodged the instant application on 15th March, 2022 is a lapse of 15 days. There is no any explanation given by the applicant for her delay to file the instant application before this court.


Having said so, it is my respectful view that the appellant has failed to adduced sufficient reasons for her delay to lodge the intended appeal within time.

In the upshot, I proceed to dismiss the application without costs.

Order accordingly.

Dated at Dar es Salaam this date 27th May, 2022.




A.Z.MGEYEKWA
JUDGE
27.05.2022

Ruling delivered on 26th May, 2022 in the presence of all parties.




A.Z.MGEYEKWA
JUDGE
27.05..2022