

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 284 OF 2019**

*(Originating from Land Application No. 93 of 2015 of the District Land  
and Housing Tribunal for Kibaha at Kibaha)*

**BERTHA STELLA MGOMBELO.....APPLICANT**

**VERSUS**

**KHERI KHAMIS MOHAMED..... RESPONDENT**

*Date of last order: 06/04/2022*

*Date of Ruling: 27/05/2022*

**RULING.**

**I. ARUFANI, J**

The Applicant, Bertha Stella Mgombelo, has lodged the present application in this court seeking for the orders of extension of time to lodge appeal in the court out of time against the decision of the District Land and Housing Tribunal for Kibaha at Kibaha delivered in Land Application No. 93 of 2015, dated 30<sup>th</sup> day of November 2018. The application is made under Section 41 (2) of the Land Disputes Courts Act Cap 216, [R.E 2019].

The application is supported by the affidavit of the applicant and on the other hand, the respondent filed in the court her counter affidavit to oppose the application. While the applicant was unrepresented in the

matter the respondent was represented by Mr. Godfrey Francis, learned advocate. By consent of the parties and the court the application was heard by way of written submission.

The applicant started her submission with section 41 (2) of the Land Disputes Courts Act, upon which the application is made and stated the power of the court to grant or refuse to grant extension of time is discretionary. It is stated in the submission of the applicant that, what is required is for the applicant to state sufficient reasons for delay. The applicant referred the court to the case of **Jehangir Aziz Abdulrasul V. Balози Ibrahim Abubakar & Another**, Civil Application No. 79 of 2016 where it was stated good cause is a relative one and is dependent upon circumstances of each individual case. It was stated further that, it is upon a party to provide the relevant material in order for the court to exercise its discretion.

The applicant argued that, the application at hand has an overwhelming chance of success as the intended appeal aim to challenge irregularities which merits the intension of lodging an appeal in the court so that the court can intervene in to rectify those irregularities by way of appeal. It was argued further that, the impugned decision was delivered on 30<sup>th</sup> November, 2018 and after the applicant being aggrieved by the

decision, she started looking for legal assistance from TAWLA as she is a person with limited financial resources.

The applicant argued that, her delay to appeal was not due to negligence on her part but she was seriously sick and she was attending treatment regularly and failed to file the appeal in the court within the time prescribed by the law. The court was referred to the case of **Regional Manager, Tanroad Kagera V. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007, CAT at DSM (unreported) where what constitutes sufficient reason was stated. The applicant based on the above submission to pray the court to grant her the extension of time is seeking from the court.

In response the counsel for the respondent stated in his submission that, the application for extension of time should be considered judiciously and ought to be supported with genuine and tangible grounds. He stated the applicant deposed in her affidavit that she delayed to file the appeal because she delayed to get copy of judgment and she stated in her submission that she was sick. The counsel for the respondent stated these are not genuine reasons in the eyes of the law.

He stated that, the judgment of the tribunal was delivered on 30<sup>th</sup> November, 2018 and the copy of the impugned judgment was supplied to the applicant on 25<sup>th</sup> February, 2019. He submitted that, as provided

under section 19 (2) of the Law of Limitation Act, Cap 89 R.E 2019 the days to appeal start to count from 25<sup>th</sup> February, 2019. Therefore, the reason that the applicant delayed to get the copy of the judgment is not justifiable reason for granting extension of time.

As for the reason that the applicant was seriously sick since December, 2018, he stated there is no any proof attached to the affidavit of the applicant as evidence to show the applicant was sick from the stated date. He stated that, the only document attached to the affidavit of the applicant is a letter from Muhimbili National Hospital dated 4<sup>th</sup> December, 2019 which states the applicant was out patient and she was not in patient. He submitted that, as the applicant was out patient she could have appealed within the time and sickness cannot be treated as a ground for extension of time.

The counsel for the respondent stated the applicant was represented in the tribunal by a lawyer hence that signifies the applicant had legal assistance of a lawyer who could have assisted her to lodge an appeal within the time. He stated that, the applicant's failure to utilize the service of her lawyer renders the reason for delay unjustifiable in the eyes of the law. He went on arguing that, the judgment of the tribunal has irregularities but that is a mere allegation which was not established anywhere in both affidavit as well as in the submission in chief. He

submitted that shows the alleged irregularities cannot be a justifiable ground for extension of time.

He submitted that, they do understand that the court has discretionary power of granting extension of time, but in exercising the stated discretionary power, the court is required to consider factors like the length of delay, the reason for the delay and degree of prejudice that the respondent might suffer if the application is granted. He supported his submission with the case of **Moto Matiko Mabanga V. Ophir Energy PLC and Others**, Civil Application No. 463/01 of 2017. He submitted that the applicant has totally failed to show relevant material for the court to exercise its discretion.

In rejoinder the applicant reiterated what is stated in her submission in chief and added that, being out patient does not mean the applicant was not seriously sick. She submitted that she was seriously sick. It was stated the applicant has shown reasonable and sufficient cause for the court to extend the period of time for institution of an appeal in the court out of time.

Having carefully considered the rival submission from both sides and after going through the affidavit and counter affidavit filed in the application at hand the court has found its main duty in this application is to determine whether the applicant has managed to establish there is

good cause for being granted extension of time within which she can file appeal in the court out of time. The court has framed the above issue after seeing section 41 (2) of the Land Disputes Courts Act upon which the application is made requires good cause for granting extension of time to be established or shown before extension of time is granted.

The question to ask hear is what is "good cause" which is required to be established or shown to move the court to exercise its discretionary power to grant extension of time for an appeal to be instituted in court out of time. The answer can be found in the cases of **Bertha V. Alex Maganga**, Civil Reference No. 7 of 2016 and **Jacob Shija V. M/S Regent Food & Drinks Limited & Another** Civil Application No.440/08 of 2017, CAT at Mwanza where the Court of Appeal stated in the latter case that: -

*"What amount to "good cause" cannot be laid by any hard and fast rule but are dependent upon the fact obtaining in each particular case. That is each case will be decided on its own merits of course taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been accounted for, the reason for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant"*

While being guided by the meaning of the term "good cause" given in the above quoted cases, the court has found the applicant deposed at paragraphs 3 and 4 of the affidavit supporting the application that, after the impugned decision being delivered the applicant applied for the copy of judgment for purpose of instituting appeal in the court to challenge the said judgment. She stated that, although the judgment was delivered on 30<sup>th</sup> November, 2018 and she applied for copy of the judgment on 3<sup>rd</sup> December, 2018 but the copy of the judgment was supplied to her on 25<sup>th</sup> February, 2019.

That being the position of the matter and as rightly argued by the counsel for the respondent the period from when the judgment was delivered until when the copy of the judgment was supplied to the applicant is required to be excluded from the period prescribed for lodging appeal in the court. Section 41 (2) of the Land Disputes Courts Act states that an appeal from the District Land and Housing tribunal in exercise of its original jurisdiction may be lodged in the High Court within forty-five days after the date of the decision.

As the copy of the impugned judgment was supplied to the applicant on 25<sup>th</sup> February, 2019 then forty-five days are supposed to be counted after the date the copy of judgment being supplied to the applicant. That means from 26<sup>th</sup> May, 2019 the last date for the applicant to lodge appeal

in the court was 11<sup>th</sup> April, 2019. However, the applicant deposed at paragraph five of the affidavit that, immediately after the judgment being delivered and when she was looking for a lawyer of filing her appeal in the court. she fell sick from December, 2018. She said she continued with treatment at Muhimbili National Hospital until 4<sup>th</sup> December, 2019 when she was told she can proceed with her duties.

The court has found the counsel for the respondent contended the alleged reason of sickness of the applicant cannot be a good cause for granting the applicant extension of time is seeking from the court because it is not only that there is no evidence attached to show she was sick from December, 2018 but also the letter from Muhimbili National Hospital attached to the affidavit of the applicant is dated 4<sup>th</sup> December, 2019 and is showing the applicant was out patient and not in patient who could have not filed her appeal in the court within the time prescribed by the law.

The court has considered the above stated argument from the counsel for the respondent and found that, there are so many pronouncements made by the court that, sickness can be a ground for granting extension of time provided there is sufficient proof that a party was disabled to file appeal, application or any other action in the court within the period of the delay. One of the cases where the above stated



position of the law was stated is **Shembilu Shefaya V. Omary Ally**, [1992] TLR 245 where it was stated that, in order for sickness to be accepted as a ground for delay to do anything required by law to be done within a certain period of time there must be an elaboration and evidence to show the applicant was sick and incapable of taking the step he was required to take throughout the period of the delay.

In the case at hand the applicant has stated she was seriously sick from December, 2018 until 4<sup>th</sup> December, 2019 when she was told she can proceed with her duties. The court has found that, although it is true that the letter annexed to the affidavit of the applicant to prove the applicant was sick is dated 4<sup>th</sup> December, 2019 but it is stated in the said letter that the applicant was sick from December, 2018 until when the letter was written on 4<sup>th</sup> December, 2019 and stated she was fairly doing well.

The court has considered the further argument by the counsel for the respondent that the letter shows the applicant was out patient hence she could have lodged her appeal in the court as she was not in patient but find that, as rightly stated by the applicant in her rejoinder being out patient is not sufficient ground for finding the applicant could have filed her appeal in the court within the required period of time. To the view of

this court an out patient may fail to do some of the work he or she is required to perform.

The court has found that, as it was stated in the letter from Muhimbili National Hospital that the applicant was instructed to continue to attend Gastroenterology clinic regularly it is the view of this court that the applicant was sick and she was attending treatment at the afore mentioned hospital. That makes the court to find the applicant has managed to establish she was incapacitated by sickness to lodge her appeal in the court within the stated period of her sickness which covers the period from December, 2018 to 4<sup>th</sup> December, 2019. The court has found the further argument by the counsel for the respondent that as the applicant had a lawyer, she could have used the said lawyer to assist her to lodge the appeal in the court within the time prescribed by the law but find there is no proof that the said lawyer had been retained to continue to assist the applicant in the institution of her appeal in the court.

That being the position of the matter the court has found the applicant has managed to satisfy the court she was delayed by good cause to lodge her appeal in the court from when the impugned judgment was delivered until 4<sup>th</sup> December, 2019. As for the period from 4<sup>th</sup> December, 2019 until when the application at hand was filed in the court on 15<sup>th</sup> June, 2021 the court has found the applicant deposed at paragraph six of

her affidavit that, after being told she can proceed with her duties and found she was already out of time she filed Miscellaneous Application No. 728 of 2019 in this court on 24<sup>th</sup> December, 2019 seeking for extension of time to appeal out of time.

As deposed at paragraphs seven, eight and nine of the affidavit of the applicant the said application was struck out by the court on 24<sup>th</sup> November, 2020. Thereafter the applicant filed in the court Miscellaneous Land Case Application No. 728 of 2020 which was withdrawn on 27<sup>th</sup> May, 2021 with leave to refile and later on she refiled the application at hand in the court on 15<sup>th</sup> June, 2021. Under those circumstances and as stated in the case of **Fortunatus Masha V. Willium Shija & Another**, [1997] TLR 154 the said period is fallen in the category of technical delay which the court is required to grant extension of time.

The court has found that, although the applicant deposed at paragraph 10 of the affidavit supporting the application and argued in her submission that the impugned decision is tainted with irregularities which might have also been a good cause for granting extension of time but she didn't disclose which irregularities are in the impugned decision. To the view this court the alleged irregularities were supposed to be clearly disclosed if not in an affidavit but in the submission to enable to court to

see whether they are really irregularities which need to be rectified so as to grant the sought order of extension of time.

The above view of this court is being buttressed by the position of the law stated in the case of **Lyamuya Construction Community Ltd V. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha (unreported) where it was stated that: -

*"Since every party intending to appeal seeks to challenge a decision either on point of law or facts, it cannot in my view, be said that in Valambia's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process.**"*  
[Emphasis added].

Since the applicant has not disclosed anywhere in the application as to which irregularities are in the impugned decision the said reason cannot be used as a good cause for granting her extension of time is seeking from the court. As the court has already found the applicant has managed

to establish she was delayed by good cause to lodge her appeal in the court within the time prescribed by the law and she has managed to account for every day of the delay the court has found that, a mere failure to establish which irregularities are in the impugned decision cannot be a ground of refusing to grant her extension of time is seeking from this court.

In the premises the court has found the applicant has managed to satisfy the court there is good cause for exercising its discretionary power to grant her the extension of time is seeking from the court. In the upshot the application is granted and the applicant is given twenty one (21) days from the date of delivery of this ruling to file in the court the intended appeal and no order as to costs in this application. It is so ordered.

Dated at Dar as Salaam this 27<sup>th</sup> day of May, 2022



I. Arufani

**Judge**

27/05/2022

**Court:**

Ruling delivered today 27<sup>th</sup> Day of May, 2022 in the presence of the applicant in person and in the presence of Mucadamu Mzee Mucadamu, relative of the respondent together with Ms. Hilda Kikoti, Legal Officer from the chamber of Mr. Godfrey Francis, advocate for the respondent.

Right of appeal to the Court of Appeal if fully explained.



*I. Arufani*

I. Arufani

**JUDGE**

27/05/2022