

**IN THE HIGHCOURT OF UNITED REPUBLIC OF TANZANIA  
LAND DIVISION  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 90 OF 2021**

*(Arising from Misc. Land Application No. 548 of 2019 High Court of Tanzania, Land Division, originating from Land Application No. 99 of 2013 from District Land and Housing Tribunal for Kibaha)*

**MUHITAJI HABIBU.....APPLICANT**

**VERSUS**

**JUMA MICHEZO.....RESPONDENT**

Last order: 9/3/2022

Ruling: 13/05/2022

**RULING**

**MANGO, J**

By way of Chamber summons made under section 14(1) of the Law of Limitations Act, [Cap. 89 R.E 2019] and section 95 and 78 (1) (a & b) of the Civil Procedure Code, [Cap. 33 R.E 2019], the Applicants seeks extension of time to file an Application for review of the decision of this Court in Misc. Land Application No. 548 of 2019 dated 2020. The application is supported by an affidavit sworn by the Applicant, Muhitaji Habibu. The Respondent, Juma Mchezo contests the grant of the application and he filed a counter affidavit to that effect.

On 19<sup>th</sup> August 2021, the Court granted the Applicant's prayer to have the application argued by way of written submissions. Parties to this application complied with the respective order accordingly.

In his submission in support of this Application, the Applicant submitted on his dissatisfaction with the decision of this Court dismissing Misc. Land Application No. 548 of 2019 for want of merits. He is of the view that, he had sufficient reasons to move the Court to grant extension of time to file his appeal against the decision of the District Land and Housing Tribunal for Pwani in Application No. 99 of 2013. Despite expressing that he has been aggrieved by the dismissal of his application for extension of time to appeal, the Applicant did not submit on the grounds for this Court to consider in determining the application at hand.

The Respondent on the other hand faulted the Applicant failure to address the ground for extension of time contained in his affidavit. He submitted that, the applicant has not advanced any sufficient reason to move this Court to grant extension of time to file his intended review application. He submitted further that the reason that has been raised by the Applicant, sickness is not proved by any medical record.

In his rejoinder, the Applicant reiterated his submission in chief.

I have considered submissions by both parties and Court record. According to the Applicant's affidavit, the reason for his delay in filing the intended review application is sickness. He averred in paragraph 4 of his affidavit that he was sick from 7<sup>th</sup> November 2020 to 6<sup>th</sup> February 2021. According to paragraph 5 of the affidavit, he was admitted at Bagamoyo District Hospital.

Despite such averment, the Applicant did not attach any medical chit to prove his allegations. In such circumstances it is hard for the Court to act on mere words by the Applicant. It is well settled principle of evidence that, whoever allege existence of facts, must prove. The requirement to proof sickness by medical evidence was emphasised in the case of **Christina Alphonse Tomas ( As Administratrix of the estate of the late Didass Kasele) versus Saamoja Masingija**, Civil Application No. 1 of 2014 , Court of Appeal of Tanzania at Mbeya. In the cited case, the Court of Appeal declined to grant an adjournment on reason of sickness which was not proved by medical evidence. The Court proceeded to dismissed an Application before it for non-appearance of the Applicant.

It is not clear why the Applicant did not attach a medical chit while he alleged to have received hospital treatment at Bagamoyo Hospital. For his failure to prove sickness which was the only ground advanced by the Applicant, I find him to have failed to account for the delay to file his intended review application with a good reason. For that reason, the Application is hereby dismissed. Given the circumstances of this case, I award no costs



A handwritten signature in blue ink, appearing to read "Z. D. Mango", is written over the printed name.

**Z. D. MANGO**

**JUDGE**

**13/05/2022**