

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

**MISC. LAND APPLICATION NO. 643 OF 2021**

**JULIUS JULIUS KARATA..... APPLICANT**

**VERSUS**

**WILIAM JOSEPH HELELA.....RESPONDENT**

**R U L I N G**

*date of last order: 17/03/2022*

*date of ruling: 30/03/2022*

**T. N. MWENEGOHA, J.**

The applicant filed the present application under Section 41(2) of the Land Disputes Courts Act, Cap 216 R. E. 2019. The application was drawn gratis by Legal and Human Right Centre in its legal aid clinic. He is praying for the following orders: -

**1. That this Honorable Court be pleased to grant extension of time to the applicant to file appeal against the decision of the District Land and Housing Tribunal for Ilala at Mwalimu House (Tribunal) in application no. 75/2020 dated 20<sup>th</sup> September 2021.**

**2. Any relief this Court deem fit to grant.**

Application was supported by the affidavit of the applicant which was countered by the counter affidavit of the respondent.

Hearing of the application was conducted by way of written submission whereby the applicant's submissions were indicated to be drawn by the applicant and the respondent was represented by Bernard Mbakileki, Advocate.

Submitting in support of the application the applicant submitted that the main reasons for delay is that the Tribunal delayed to supply him with the copies of proceeding, judgment and decree despite the fact that he had prompt and diligently applied to the Tribunal on 24<sup>th</sup> September 2021 to be supplied with the same so as to enable him frame a sound petition of appeal. He submitted that he was supplied with the copy of judgment on 11<sup>th</sup> October 2021 and copy of proceeding on 31<sup>st</sup> January 2022 after making several follow up.

It is his submission that since it is the Tribunal's fault by failing to supply him with the copy of judgment and proceedings it has thus contributed to the delay and denying him extension of time will amount to penalizing him for the mistake done by the Tribunal. He insisted further that denying him this will amount to denying his constitution right to appeal as per Article 13(6) of the Constitutional of the United Republic of Tanzania, 1977.

His second reason of delay is that he had to set down and reflect on the way forward where he sought legal assistance from Legal and Human Right Centre and he was informed that he was out of time to file appeal before this court.

On the third reason for delay is that he was ill and attended medical services at Kivule Medical Hospital as stated at paragraph 4 of his affidavit where he had ED from 24/10/2021 to 29/10/2021 and from 2/11/2021 to

14/11/2021 as shown on the sick sheet annexed to this application. He then cited the case of **R v Yona Kaponda and Others (1988) TLR 84** where it was held that in application for extension of time the court has to consider whether or not there are sufficient reasons for extending time.

He submitted that he had two main sufficient reasons, one he intended to challenge illegality of the decision of the trial Tribunal, where he stated that his evidence was heavier compared to the one adduced by the defense case.

His second reason is that the right to appeal is his constitutional right. He also cited different authority including the case of **Tanzania Rent A Car Limited vs. Peter Kimuhu, Civil application no. 210/01 of 2019** to back up his submission.

He added that he has overwhelming chance of success in appeal if this court finds it appropriate to grant the order sought in the chamber summons. And in contrary he is likely to suffer irreparable loss over and above the loss he has already suffered. He therefore prayed for his application be granted.

In reply the respondent submitted that the Tribunal issued the decision on 20<sup>th</sup> September 2021 while the applicant on 18<sup>th</sup> November 2021 filed the present application which is **15 days** of delay.

He submitted that the applicant in his affidavit deponed that he was sick and attended medical checkup at Kivule and annexed unsigned medical reports while in reply to the respondent counter affidavit the applicant attempted to come up with different explanation claiming that delay was contributed by the Tribunal's delay to provide him with copies of

proceedings, judgment and decree which is not supported any certificate of delay issued by the Registrar of the Tribunal.

He submitted further that the applicant has kept on insisting that his delay was contributed by the delay of the Tribunal to supply him documents and even gone so far to allege that he was supplied with a copy of proceedings on 31<sup>st</sup> January which is not so deponed at in his reply to counter affidavit. He submitted that the affidavit and reply to counter affidavit being substitute of oral evidence the applicant is not at liberty to change what he deponed to in his affidavit and reply to counter affidavit simply to cure the deficiencies of his case after his alleged medical reports were countered for being unsigned and therefore useless as evidence.

He then cited different authorities including the case of **Lyamuya Construction Company Ltd vs. Board Pf Registered Trustee of Young Women's Christian Association of Tanzaniay, civil Application No. 2 of 2010(unreported)** as the guidance on granting the application of this nature.

He also submitted that on the allegation that the applicant has a great chance of success he replied that the applicant in the hearing totally failed to prove his claim of being rightful owner of the suit property as he has no any documents to support his claim of ownership of the suit property. it is submission that the applicant simply gambling for his unfounded claim and granting him extension of time to file an appeal will amount to wastage of this court's time.

He therefore prayed that the applicant prayer should not be granted as there were no sufficient reasons to account for his delay.

In rejoinder the applicant submitted that the copies of medical reports were signed by Dr. Ndunguru and he insisted that he felt serious sick and he was advised to rest and then reiterated his submission in chief.

Having gone through submissions of both counsels the issue for determination is whether the application have merits.

The condition in granting application for extension of time is purely discretion of the court whereas this discretion should be exercised judiciously. Different cases give guidelines on what to consider when the court is exercising his discretion including the case cited by the Mr. Mbakileki the case of **Lyamuya Construction Company Ltd v Board of Trustees of Young Womens' Christian Association of Tanzania, Civil Application No. 2 of 2010** These guidelines are: -

- i. The applicant must account for all the period of delay.*
- ii. The delay should not be inordinate.*
- iii. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- iv. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

The applicant has submitted that the Tribunal did not supply him with the copy of judgment and proceedings on time and that even after being supplied with it he got sick and got ED and that he was seeking legal advice from Legal and Human Right Centre.

In reply the respondent's counsel alleged that the applicant did not account for his 15 days of delay and that his medical receipt is not signed.

I have gone through the attached medical receipt attached by the applicant in his affidavit they are indicated that on 13<sup>th</sup> October 2021, 24<sup>th</sup> October 2021 and also 2<sup>nd</sup> November 2021 where he was given bed rest for 5 days at home. The medical forms are from Kivule Hospital with the stamp written "*Halmashauri ya jiji la Dar es Salaam, Hospitali ya Wilaya ya Ilala, Kivule*". the same are indicated to signed by F. Ndunguru.

From the above observation the court has found that the medical report is signed and stamped by the hospital.

The delay is 15 days and the applicant's application has been drawn in gratis by Legal and Human Right Centre under legal aid clinic. I take these factors to be convincing on part of the applicant.

Moreover, the applicant has attached medical chits proving that he was attending hospital and the fact that he was unrepresented, I find it fair to use my discretionary power to extend time for the applicant to file his appeal out of time.

Appeal should be filed within 14 days from the date of this ruling. Costs shall follow the cause.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**30/03/2022**