

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

MISC. LAND CASE APPLICATION NO. 251 OF 2022
*{Arising from Land Application No. 61 of 2008, by Kinondoni District Land and
Housing Tribunal, before Hon. R.L David, Chairperson}*

PILI MWINYIMKUU.....APPLICANT

VERSUS

**JANE CHACHA (Administratrix of the Estate of the late
FANUEL MONATA)RESPONDENT**

R U L I N G

Date of Last Order: 25.07.2022

Date of Ruling: 29.07.2022

T. N. MWENEGOHA, J.

The applicants are seeking for an order of extension of time so that she can lodge an appeal out of time, against the decision delivered by Hon R. L. David, vide Land Application No. 61 of 2008. The application was brought under Section 14(1) of the Law of Limitations Act, Cap 89, R.E. 2019 and section 41(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019. It was also accompanied by the affidavit of Pili Mwinyimkuu, the applicant herein above. The same was heard by way of written submissions, Advocate Stoki H. Joachim appeared for the applicant while the respondent enjoyed the legal services of Advocate Stephene Ndila Mboje.

Mr. Joachim arguing in favour of the application was of the view that, the applicant has been sick for a period of 14 years and that has been the reason why she failed to present her appeal within the required time. That, she became ill immediately after the pronouncement of the impugned decision and she was suffering from mental disorders including Major Depressive Disorders. That means she was of unsound mind, hence incapable of challenging the decision in question.

That, after regaining her health, she used another time about 10 days looking for an Advocate to pursue this application. Mr. Ndila went on to argue that, sickness of the applicant constitutes a good cause, sufficient to allow this application. He referred the court to the case of **Emmanuel R. Maira vs. The District Executive Director, Bunda District Council, Civil Application No. 66 of 2010 (unreported)**.

In reply, Mr. Mboje for the respondent was of the view that, the applicant has failed to prove that she was sick. The medical report attached annexure PM2 has a lot of shortcomings to convince the court that the applicant was suffering from the illness stated in her affidavit and submissions in support of the application. The same does not show the duration of treatment, dates or months when the treatments were given. That, it also does not show when exactly the applicant was admitted.

That, above all, as per Section 19(1), 23(1), 24(1), (3) and (5) of the Mental Health Act of 2008, there should be a proof that a relative of the applicant moved the court for a declaration that, the said person is mentally unstable for another person to be appointed on her behalf to pursue her appeal against the impugned decision. She failed to do so, hence this application is devoid of merits.

In his brief rejoinder, Mr. Joachim reiterated his submissions in chief and prayed for the application to be allowed.

I have considered the submissions of the applicant and the respondents in this application. Also, I have gone through the affidavit and counter affidavits of both parties. The question needing determination in the instant application is whether the applicant have given sufficient reasons and also accounted for the delay to take her intended action. These are the canon rules for a successful application for extension of time. See **Oswald Masatu Mwinzarubi vs. Tanzania Fish Processors Ltd, Court of Appeal of Tanzania, at Mwanza, Civil Application No. 13 of 2010, (unreported).**

In the application at hand, the reason for delay given by the applicant is that, she was sick for a long time, about 14 years. That, she was suffering from mental illness. She attached with her application, two letters from two different Hospitals. Both letters written in May, 2022. The 1st one is annexure PM-2, dated 06th May, 2022. It is a letter from a Clinical Psychiatrist of Lutindi Mental Hospital, one Katyetye Marwa, showing that the applicant was admitted twice in the said Hospital for mental health problems. The second letter is dated 10th May, 2022, from Patrick J. Elias, also a Clinical Psychiatrist, from Makurumla Health Center. The same shows that, the applicant has been attending their facility for mental health problems.

However, as argued by the counsel for the respondent, it is not easy to determine the extend of the sickness basing solely on these two letters attached. At least the applicant should have provided a full medical report, considering the time she spent taking care of her mental health.

Submitting before this court mere letter from these hospitals cannot move it to believe that her claims are true.

Above all, these documents do not prove that she was sick to the extent of being impaired to pursue her intended appeal for all her time of 14 years.

In absence of concrete evidence as to her mental health during these 14 years of her delay to file her appeal, the court is left to believe that, the application at hand is a result of an afterthought owing to the time she spent without taking any appropriate measures to challenge the decision in dispute.

That is to say, the applicant has failed to give sufficient reasons for her application to be allowed. She has also failed to account for the whole period of delay.

In the end, the application is dismissed with costs.

It is so ordered




T. N. MWENEGOHA
JUDGE
29/07/2022