

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 656 OF 2021

(Arising from the decision of the High Court of Tanzania Land Division in Land Case No. 167 of 2007, Hon. Longway, J. dated 22nd January 2010)

BETWEEN

DEBORA MASATU APPLICANT

VERSUS

PHILIP PAUL RESPONDENT

RULING

Date of last Order: 28/8/2022

Date of Judgment: 12/08/2022

A. MSAFIRI, J.

This is a ruling on application by one Debora Masatu. She is seeking for the following order;

1. That this Honourable Court be pleased to grant extension of time to the Applicant to lodge Notice of Intention to Appeal to the Court of Appeal out of time against the Judgment and Decree of the High Court of Tanzania, Land Division at Dar es Salaam, in Land Case No. 167 of 2007 by Honourable Longway J, dated 22nd January 2010.
2. For any other order (s) as this Honorable Court may deem fit and just to grant. *Alle.*

The application is made under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and is supported by the affidavit of the applicant. The application is opposed by the respondent Philip Paul who has filed his counter affidavit.

The application was argued by way of written submissions. The applicant's written submissions in support of application were drawn and filed by her advocate, Mr. Augustine Kusalika, and the respondent's submission against the application was drawn and filed by Ms. Caster Lufungulo, the advocate for the respondent.

In his submission in chief, Mr. Kusalika stated that the reasons for delay was not occasioned by negligence of the applicant but on two grounds namely; sickness of the applicant and improper advice as demonstrated in the affidavit of the applicant which he prayed to adopt to form part of his submissions.

He said that, in the contents of the affidavit, the applicant has totally managed to account for each day of delay and the reasons stated therein are sufficient for this Court to grant the application. He stated further that the reasons of sickness, illegality of the verdict or judgment and lack of proper legal advice from her legal attorney are sufficient to grant this application. He argued that this application has been brought promptly and cited the case of **Rutagatina C.L. vs. Advocates Committee & Clavery and Mtindo Ngalapa**, Civil Application No. 21 of 2001 (unreported). He prayed for the application to be granted with no order as to costs. *Alls*

Ms. Lufungulo submitted in reply against the applicant and stated that, the applicant has not advanced any good/sufficient cause for delay.

On the reason of sickness, the counsel for the respondent stated that, the applicant has not attached any medical report which shows that on all the time from 22/01/2010 to 28/11/2021, she was hospitalized hence failing to do anything including filing the notice of appeal to the Court of Appeal. She added that, the applicant has not even attached any medical certificate from a doctor who attended her to prove that she was suffering from Hypertension and heart disease.

On the reason of improper legal advice from the applicant's previous advocate, the counsel for the respondent submitted that, it is a settled principle of law that ignorance of the law is not an excuse, and that every person, let alone the litigant, is presumed to know the law. She cited the case of **Salum Ahmada Kuangaika vs. Mohamed Mussa Salum**, Civil Reference No.04 of 2011, at page 4 (unreported).

The counsel for the respondent stated further that, the applicant has failed to show a reasonable cause of her delay of more than 11 years and 10 months, has not accounted for each day of delay, and that the delay is inordinate. She submitted further that, there must be an end to litigation or litigation must come to an end. She cited the case of **Salim Mohamed Marwa @ Komba and another vs. The Republic**, Criminal Application No.1 of 2020 (Unreported). She invited the Court to dismiss the application with costs.

Alle.

Having considered the submissions made by the learned counsels in the written submissions and examined the contents of the affidavit and counter affidavit, together with the authorities referred to this Court by parties, the issue for my determination is whether the applicant has advanced sufficient reasons to warrant this Court to grant her application for extension of time to file a notice of appeal to the Court of Appeal.

This Court is conferred with powers to deal with the current application under section 11(1) of the Appellate Jurisdiction Act which provides that this Court may extend time for giving notice of intention to appeal from the judgment of a High Court notwithstanding that the time to give notice has already expired. However, this is on discretion of the Court where sufficient reasons have been established by the applicant. (See also the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, CAT (Unreported).

I will determine this application basing on the guidelines set in the case of **Lyamuya Construction Company Limited vs. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

The guidelines are;

- i) The applicant must account for all 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.

Alle.

- iv) If the Court feels that there are 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.

In the submission, Mr. Kusalika for the applicant has stated that the reasons for delay are well explained in the affidavit of the applicant. He cited three reasons; sickness, illegality of the judgment and lack of proper legal advice from the applicant's previous Attorney.

On the reason of sickness, the applicant has stated that, the impugned judgment was delivered on 22/1/2010, and that since then, she has been in and out of Hospital suffering from Hypertension and Heart diseases. That, the sickness has made her unable to take necessary steps against the impugned judgment on time. She said she has attached a Reference letter from Muhimbili National Hospital as "DM 7". I have read the said letter which is dated 16/6/ 2017. It is titled that the applicant has a known case of Hypertension and heart disease for a long time, May 2015 – June 2017. The letter states that the patient is optimally managed and requested to attend several follow up at the Outpatient Department Clinic.

In my view, according to this letter, the applicant's sickness started in May 2015 and went on to June 2017. The impugned judgment was delivered on 22/01/2010, so the reason that the applicant was unable to attend the matter promptly due to the sickness cannot stand as a reference letter from Muhimbili Hospital shows that the applicant started to suffer and attend the hospital from May 2015 which is five (5) years after the delivery of the impugned judgment.

AMs

Further, I agree with the respondent's submission that, the applicant was an outpatient so it is not shown whether she was unable to attend to the matter on time as per the requirements of the law. The letter from Muhimbili Hospital proves that as it shows that the applicant was requested to attend several follow up at the Hospital.

The fact that the applicant was well enough to attend to her case is shown at paragraph 11 of her affidavit where she stated that, after she was feeling well, on 22/8/2017, she filed Miscellaneous Land Application No. 722 of 2017 against the respondent, seeking for extension of time to apply for Review of the impugned judgment. This shows clear that the applicant was not deterred by the sickness in her delay of lodging the notice of intention to Appeal. If she could file for Application for extension of time for Review in August 2017, then she was capable of filing for the extension of time to file notice of appeal.

In addition, since the letter from Muhimbili Hospital shows that the applicant's sickness was from May 2015 to June 2017, the applicant has not accounted for the days from the date after the delivery of judgment in 2010 to May 2015 when she purportedly fell sick and was hence unable to attend the case. I find this reason of sickness not to be sufficient and I reject it.

The second reason advanced by the applicant is illegality. In her affidavit at paragraph 17, the applicant states that the proceedings were tainted with illegality from the beginning. To paraphrase, the illegalities claimed are;

Acts.

- i) *That, the respondent instituted his claim as the lawful owner of the disputed property while he should have instituted the proceedings as the administrator of the estate of the late Esther Jacob Masatu (his deceased mother), hence the respondent had no locus standi to sue in his personal capacity.*
- ii) *There was discrepancies of evidence during the trial which was produced by the respondent regarding the actual age of his deceased mother.*
- iii) *There is a great chance of success of intended appeal, as there is illegalities which made the Commissioner for Lands to be unable to comply with order of the Court to change the name of Applicant in the Title Deed with that of the Respondent, to date.*

In the case of **the Principal Secretary Ministry of Defence and National Service vs. Devram Valambhia** (1992) TLR 182, it was held that;

"In our view, when the point at issue is one of alleging illegality of the decision being challenged, the court has a duty even if it means extending time for the purpose to ascertain the point and if the alleged illegality is established, to take appropriate measures to put the matter and record straight."

By the above principle, the reason of illegality is taken as a sufficient cause for extension of time. *Adls-*

However, for this principle to apply, such point of law/illegality must be of sufficient importance and must also be apparent on the face of record, not one that would be discovered by a long-drawn argument or process. In the case of **Lyamuya Construction Company Limited (supra)**, the Court of Appeal made observation that;

*"Since every party intending to appeal seeks to challenge a decision either on points 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 the sufficient importance and, **I would add that it must 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 is mine).*

Guided by the above observations by the Court of Appeal, I have read the claimed illegalities as stated in the affidavit of the applicant. It is my view that what are claimed as illegalities are actually grounds of appeal. I say so because the claimed illegalities are not apparent on face of record and they need to go through the evidence to ascertain them. They can be ascertained by long drawn arguments between the parties. It is my finding that the illegalities pointed by the applicant does not qualify to be termed so and hence cannot be sufficient cause for extension of time.

Alle

Another reason for delay advanced by the applicant in her affidavit and in the submission by her advocate is the lack of proper legal advice from her previous legal attorney.

This need not take much time. As correctly, put by the counsel for the respondent, ignorance of law has never been an excuse. This was also observed in the case of **Omari R. Ibrahim vs. Ndege Commercial Services Limited**, Civil Application No. 83/01 of 2020, CAT at DSM (Unreported), where it was held that, ignorance of law or negligence on the part of the advocate are not valid reasons for extension of time.

To sum up, the applicant has failed to meet the guidelines set in the case of **Lyamuya Construction Company Limited (supra)**, which I have reproduced herein above. She has failed to establish any sufficient cause for this Court to exercise its power and grant the prayer for extension of time to file the Notice of Intention to Appeal to the Court of Appeal.

I find the Application to have no merit and I hereby dismiss it with costs. Right of Appeal explained.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal dotted line.

A. MSAFIRI

JUDGE

11/8/2022