

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

MISC. LAND APPLICATION NO. 286 OF 2021

KHALFAN NASSORO RUHOMBO.....APPLICANT

VERSUS

**MTONGANI VILLAGE COUNCIL.....1ST RESPONDENT
SELEMAN PAZI.....2ND RESPONDENT
YASINI MWANGA.....3RD RESPONDENT
KASULE AMBOGO.....4TH RESPONDENT
ELIBARIKI LYAMUYA.....5TH RESPONDENT
MOHAMED MUHIDIN JUMAA.....6TH RESPONDENT
IDDI LIMBOKA.....7TH RESPONDENT
RASHID LIMBOKA.....8TH RESPONDENT**

Date of Last Order: 24.06.2022
Date of Ruling: 01.08.2022

RULING

V.L. MAKANI, J.

The applicant KHALFAN NASSORO RUHOMBO is applying for orders of extension of time to appeal out of time against the decision of the Kibaha District Land and Housing Tribunal (the Tribunal) in Land Application No. 21 of 2005 (Hon. Jerome Njiwa, Chairman).

The application is made under section 41(2) of the Land Disputes Court Act CAP 216 RE 2019 and is supported by the affidavit of the applicant herein. The application proceeded ex-parte after the

respondents failed to enter appearance despite being aware of the hearing date.

The application proceeded orally and Mr. Mposso Advocate submitted on behalf of the applicant. He said this court has power under the law to grant extension of time to file an appeal where there are sufficient reasons. He said the reasons for failure by the applicant to file the appeal within time was because of sickness. He had travelled to Tabora on 05/01/2018 and returned to Dar es Salaam on 20/06/2019 and during that time he was attending local treatment for paralysis. On 02/02/2018 the decision of the Tribunal was delivered. He said with the applicant's sickness he could not do anything considering further that he is old, about 80 years. He said there is a letter from the Chairman of the Street where the herbalist was attending the applicant (AnnexureP2) and also the affidavits of the said herbalist and the Certificate of Registration. Mr. Mposso relied on the case of **Shembilu Shefire vs. Omari Ally [1992] TLR 245** where the court stated that if sickness is relied upon as delay there must be elaborative explanation in the affidavit to the extent that the said sickness prevented the litigant from taking steps in the court. He further cited the case of **Sichone vs. Bulebe Hamisi, Civil**

Application No. 8 of 2015 quoted in the case of **Nyanza Road Works Limited vs. Giovanni Guidom, Civil Appeal No. 75 of 2020 (CAT-Dodoma)**(unreported).

Mr. Mposso said this is a second attempt made by the applicant. to seek for leave to appeal out of time. In Misc. Land Application No. 584 of 2018 Hon. Maige, J (as he then was) struck out the application for non-disclosure of sufficient material facts/evidence to prove the applicant's sickness. After the delivery of this ruling the applicant decided to instruct his advocate to file another application with the supporting documents as directed by the court but he did not do so and took time for the applicant to get the files from the said advocate. He got the files after complaining to the Registrar of High Court Land Division in 04/05/2021. He relied on the case of **Zuberi Mussa vs. Shinyanga Town Council , Civil Application No. 3 of 2017** as quoted in **Kambona Charles (as administrator of the estate of the late Charles Pangamu) vs. Elizabeth Charles, Civil Application No. 529/17 of 2019 (CAT-DSM)** (unreported). Mr. Mposso concluded by praying for the application to be granted with the view of meeting the ends of justice.

It is the position of the law that grant of an application for extension of time is purely the discretion of the court. However, that discretion must be exercised judicially by considering whether the applicant has given sufficient cause to account for the delay. See the case of **Yusuf Same & Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002) (CAT-DSM)** (unreported).

The applicant's main reason for the delay is that he was sick and away from Dar es Salaam. Indeed, there is an affidavit of the herbalists registered under *Chama cha Waganga na Wakunga Tiba Asilia* (CHAWATIATA) an association under the Traditional and Alternative Medicine Act, 2002 who were treating the applicant. There is also a letter from the Street Chairman where the herbalists reside and the said Chairman stated that he was aware that the applicant was being treated by the said herbalists (**Annexure R-2** collectively).

It is apparent as displayed by the applicant in his affidavit, that he attended local medical treatment in Tabora and by the time the judgment was delivered he was not in Dar es Salaam, and therefore was not in a position to attend court and make a follow up thereafter.

He has also shown diligence by making efforts to get material facts to prove his sickness as he was directed by this court in Misc. Land Application No. 584 of 2018. In the case of **Emmanuel R. Maira vs. The District Executive Director, Bunda District Council, Civil Application No.66 OF 2010 (CAT-DSM) (unreported)** the Court of Appeal said:

"Health matters, in most cases, are not the choice of a human being, cannot be shelved and nor can anyone be held to blame when they strike"

Subsequently, the reasons given by the applicant are in my view sufficient. And considering that the delay and sickness was not challenged by the respondents I find merit in this application.

In the result, extension of time is granted to the applicant to file his appeal within **30 days** from the date of this ruling. There shall be no order as to costs

It is so ordered.




V.L. MAKANI
JUDGE
01/08/2022