

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 811 OF 2022**

*(Originating from the decision of District Land and Housing Tribunal for  
Temeke in Land Application No. 225 of 2020 delivered by Hon. P.I  
Chinyele dated 22<sup>nd</sup> December, 2021)*

**MWAPOMBE ABDALLAH ..... APPLICANT**

**VERSUS**

**ATHUMAN HUSSEIN KAMTUPE ..... RESPONDENT**

**RULING**

*Date of the last Order 20.03.2023*

*Date of Ruling: 22.03.2023*

**A.Z.MGEYEKWA, J**

This is an Application for an extension of time to file an appeal out of time. The Application is brought under 38 (1) of the Disputes Courts Act, Cap.216 [R.E 2019]. The application is accompanied by the Chamber Summons supported by the affidavit of Mwapombe Abdallah, the applicant. The respondent has demonstrated his resistance by filing a counter affidavit deponed by Athuman Hussein Kamtupe, the respondent.

When the matter was called for hearing on 20<sup>th</sup> March, 2023 the applicant and the respondent appeared in person, unrepresented.

In her oral submission, the applicant' urged this Court to adopt her affidavit to form part of her submission. The applicant was very brief. The applicant complained that she suffered from a stroke and hence she was unable to make any follow and collect the copies. The applicant submitted that she was helpless lying in bed, thus, she had to engage a legal assistant, but her lawyer delayed filing the intended appeal within time. She added that after feeling better, she come before this Court and filed the instant application.

In conclusion, the applicant beckoned upon this Court to grant her application.

On his part, the respondent resisted the application with some force. He submitted that there is a time limit for filing an appeal. He valiantly argued that the tribunal delivered its Judgments and informed the applicant that in case she is dissatisfied, she can file an appeal within 45 days. The respondent went on to submit that the applicant did not tender any hospital chic to prove her sickness. He stated that the right to appeal is a constitutional right but there is a limitation period to file an appeal.

In conclusion, the respondent urged this Court to adopt his counter-affidavit to form part of his submission and dismiss the application.

In her rejoinder, the applicant had nothing new to rejoin, she reiterated her submission in chief. Stressing on the point of sickness, the applicant said that she was treated at home and later she managed to go to the hospital

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavits and counter-affidavits, the issue for our determination is *whether the applicant has adduced sufficient cause to warrant this Court to grant her application.*

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in the case of **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil

Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported).

The applicant has raised one limb for her delay, sickness. As amply submitted by the applicant that she was ill and helpless lying in bed. The illness of the applicant is forcefully challenged by the respondent that the applicant did not support her allegation of sickness with any hospital chic. He contended that the applicant was not seriously ill for her not to file an appeal within time. I understand that sickness is a good ground for an extension of time only if the said sickness is explicable. In the case of **John David Kashekya v. The Attorney General**, Civil Application No. 1 of 2012 (unreported), the Court discussed in detail the issue of sickness where it stated:

*"...sickness is a condition which is experienced by the person who is sick. It is not a shared experience. Except for children who are not yet in a position to express their feelings, it is the sick person who can express his/her condition whether 10 he/she has the strength to move, work and do whatever kind of work he is required to do. In this regard, it is the applicant who says he was sick and he produced medical chits to show that he reported to a doctor for check-up for one year. There is no evidence from the respondent to show that after that period, his condition immediately became better and he was able to come to Court and pursue his case. Under such circumstances, I do not see reasons*

*for doubting his health condition. I find the reason of sickness given by the applicant to be sufficient reason for granting the application for an extension of time to file a notice of appeal and the memorandum of appeal out of time."*

The applicant in her affidavit specifically paragraphs 5, 6, 7, 8, 9, and 10 explained in length that she had a stroke, attended several checkups, and continued with treatments. However, she did not attach any hospital chic to prove that she was attending medical treatment. Had been that the applicant proved that she attended clinics then it would be easier for this Court to grant her application for extension of time based on the ground of sickness. However, since the applicant has failed to prove her allegations then it is not safe to believe that the applicant was in poor health for a whole year.

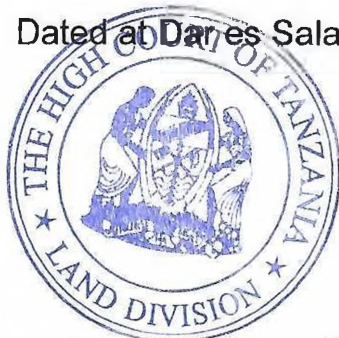
In my considered view, the alleged delay of the applicant is not a *prima facie* panacea for a case of delay whenever it is pleaded. I am saying so because a ground of sickness must be supported by documentary evidence.

From the foregoing, it is dear that there is no good cause for an extension of time that can be said to have been shown in the circumstances of this application where the applicant has completely failed to account for the delay of each day.

In the event, I find no merit in the application and I hereby dismiss it without costs.

It is so ordered.

Dated at Dar es Salaam this date 22<sup>nd</sup> March, 2023.



  
A.Z.MGEYEKWA

**JUDGE**

22.03.2023

Ruling delivered on 22<sup>nd</sup> March, 2023 in the presence of both parties.



  
A.Z.MGEYEKWA

**JUDGE**

22.03.2023