

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

MISC. LAND CASE APPLICATION NO.791 OF 2022

*{Arising from Land Appeal No.125 of 2020, by Kibaha District Land and
Housing Tribunal}*

**BEN CHALE,
..APPLICANT**

VERSUS

**TUNTUFYE MWAMBUSI
..RESPONDENT**

RULING

Date of Last Order: 22.02.2023

Date of Ruling: 31.03.2023

T.N. MWENEGOHA, J

The applicant is seeking for an order of extension of time so that he can lodge an appeal out of time, against the decision of the District Land and Housing Tribunal for Kibaha District, *vide* Land Appeal No.125 of 2020, dated 15th October, 2021. The application was brought under **Section 38(1) of the Land Dispute Courts Act, Cap 216, R.E 2019**. It was accompanied by the affidavit of the applicant himself, Ben Chale. The same was heard by way of written submissions.

Learned counsel Aaron Lesindamu appeared for the applicant while the respondent enjoyed the noble legal services of advocate Rajabu Mrindoko.

Mr. Lesindamu, for the applicant in his submission started by praying the applicant's affidavit be adopted and form part of his submissions before submitting that, the applicant's delay was not caused by negligence, rather by sickness. That, he was suffering from chronic malaria and as a result he was admitted at Tanganyika Regional Hospital at Mpanda. To support his position, the counsel for the applicant referred the case **Alasai Josia (Suing as an Attorney of Oscar Sawuka) versus Lotus Valley Ltd**, Civil Application No. 498/12 of 2019 (unreported).

Submitting for the respondent, Mr. Mrindoko, argued that, there is no evidence that the applicant was suffering from chronic malaria. That, according to annexure-3, it is shown that he was suffering from Covid-19. However, even the said medical report was obtained on the 31st of October, 2022. Further, there is no proof that the applicant travelled to Mpanda on the material dates, as there are no tickets to show that, on the 29th October, 2022 the applicant travelled to Mpanda, from Dar Es Salaam. It was his argument therefore, that his application be dismissed as decided in the case of **Hawa Issa Nchirya versus Ramadhani Idd Nceirya and 2 Others**, Civil Application No. 27/03/of 2021(unreported) and also in the case of **Nyanza Road Work Limited versus Giovan Guidon**, Civil Appeal No. 75 of 2020(unreported).

I have considered the submissions of parties through their respective counsels. I have also gone through the joint affidavit and counter affidavit against the application. The issue for determination is whether the application has merits or otherwise.

The reason advanced by the applicant and his Advocate to be the cause of the delay to appeal within time was the sickness of the applicant, that he was suffering from chronic malaria and was admitted at Tanganyika Regional Hospital at Mpanda. He annexed a letter from Dr. Alex Mrema, a District Medical Officer, dated 31st of October 2022, showing that, the applicant was quarantined from the 15th October 2021 to 28th October, 2022 due to Covid-19 (see annexure -3).

In my opinion and with all due respect on the applicant and his counsel, annexure-3 is not a medical chit, capable of proving that the applicant was sick. It is just a letter informing any concerned person that the applicant was sick as shown in that particular letter. After all, as argued by Mr. Mrindoko, the said annexure-3 contradict the averments by the applicant in his affidavit. He stated at paragraph 7 of his affidavit that, he was suffering from chronic Malaria. The same disease was stated in the submissions by the applicant's counsel. However, according to annexure 3 the applicant was suffering from Covid-19. Moreover, there is no tangible evidence to prove that, the applicant was really sick as claimed. Only allegations of the existence of such sickness on his part.

For these reasons, I find the applicant to have failed to give sufficient reasons for his application to be allowed. He did not account for all the time he delayed in taking his intended application. Therefore, his application is found to be devoid of merits, **See Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD, Court of Appeal of Tanzania**, Civil Application No. 13 of 2010 (Mwanza

Registry, (unreported) and **Victoria Real Estate Development Ltd versus Tanzania Investment Bank and Others**, Civil Application No. 225 of 2014, Court of Appeal of Tanzania at Dar Es Salaam (unreported).

In the end, the same is dismissed with costs.

 
T.N. Mwenegoha.
Judge
31/03/2023