

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 123 OF 2023

*(Originating from Land Application No. 116 of 2019 in the District Land
and Housing Tribunal for Kibaha)*

TAIMU JEURI APPLICANT

VERSUS

VIGWAZA VILLAGE COUNCIL RESPONDENT

RULING

Date of the last Order 31.03.2023

Date of Ruling: 25.04.2023

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 41 (2) of the Disputes Courts Act, Cap.216 [R.E 2019]. The application is accompanied by the Chamber Summons supported by the affidavit of William Taimu Jeuri, the applicant. The respondent has demonstrated his resistance by filing a counter affidavit deponed by Vigwaza Village Council, the respondent.

When the matter was called for hearing on 25th April 2023 the applicant had the legal service of Mr. Kiondo Rajabu, counsel. The respondent did not show appearance, hence the hearing proceeded *ex parte* against him.

In her oral submission, the applicant's counsel had not much to say. He rather urged this Court to adopt the Chamber Summons and the applicant's affidavit to form part of his submission and grant the applicant's application.

Having considered the submission made by the learned counsel for the applicant 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 allow his application.*

The grant of extension of time is discretionary, and the Court can only exercise such discretion judiciously if the party seeking to have the remedy adduces sufficient cause for the delay. Some of the preconditions for such grant were underscored in the famous cases of **Ngao Godwin Lusero v Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Dar es Salaam and **Lyamuya Construction Company Limited v. Board of Trustees of Young Women's Christian Association of Tanzania**, CAT-Civil Application No. 10 of 2010 (unreported). In the case of **Ngao Godwin Lusero** (supra). The guidelines include the following:-

- (i) The applicant must account for all the periods of delay

- (ii) The delay should 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.
- (iv) If the court feels that their other 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 instant matter, the applicant has advanced one sole ground for an extension of time. That he was unwell. As amply submitted by the applicant that he was ill and still unwell helpless lying in bed. I understand that sickness is a good ground for an extension of time but only if the said sickness is explicable. In **John David Kashekya v The Attorney General**, Civil Application No. 1 of 2012 (unreported), the Court discussed in detail the issue of sickness, it stated that:-

"...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-ups 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."

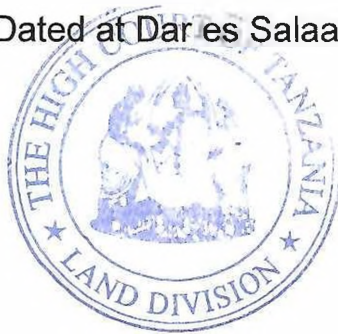
The applicant in his affidavit specifically paragraphs 4, 5, and 6 explained in length that he underwent medical treatment and was attended several checkups, and continued with treatments. To support his allegation, he attached a hospital chic to prove that he was attending medical treatment. In November 2022 and the impugned decision was delivered on 27th September 2022. In my considered view, the alleged delay of the applicant is a *prima facie* panacea for a case of delay whenever it is pleaded. I am saying so because a ground of sickness is supported by documentary evidence.

I have also considered the fact that the respondent would neither be prejudiced nor suffer any irreparable injury by the grant of this application as it was held in the case **Jesse Kimani v Mc Cornel and another** [1966] EA 547.

From the foregoing, I proceed to grant an extension of time. The applicant is given thirty days to file an appeal before this Court. For the avoidance of doubt, the circumstances of this application are such that there should be no order to costs.

Order accordingly.

Dated at Dar es Salaam this date 25th April 2023.




A.Z.MGEYEKWA
JUDGE
25.04.2023

Ruling delivered on 25th April 2023 in the presence of Mr. Kiondo Rajabu, learned counsel for the applicant.




A.Z.MGEYEKWA
JUDGE
25.04.2023