

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 129 OF 2023**

*(Arising from the decision of the High Court of Tanzania at Dar es Salaam by Hon. S.M.Maghimbi, J dated 7<sup>th</sup> May 2020 Originating from Land Case No. 154 of 2019)*

**ALLY ABBASI ..... APPLICANT**

**VERSUS**

**NURU MAPUNDA ..... RESPONDENT**

**RULING**

*Date of the last Order 25.04.2023*

*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 11 (1) of the Appellate Jurisdiction Act Cap.141 [R.E 2019]. The application is accompanied by the Chamber Summons supported by the affidavit of Ally Abbasi, the applicant. The respondent has demonstrated his resistance by filing a counter affidavit deposed by Nuru Mapunda, the respondent.

When the matter was called for hearing on 25<sup>th</sup> April 2023 the applicant and the respondent appeared in person, unrepresented.

In her oral 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 he filed the instant application for an extension of time to file an appeal out of time because he had diabetes and BP problems. The applicant went on to submit that his Doctor told him that he had serious sickness. He stressed that he was unable to file an appeal within time because of his poor health condition.

Responding, the respondent was brief. She submit that when the case was ongoing before this Court, the applicant was in good condition and prosecuted his case within three months. She contended that after the applicant lodged the instant application after noting that there was a pending execution application before the Tribunal. She urged this Court to dismiss the application.

In his rejoinder, the applicant reiterated his submission in chief. He stressed that for a long time, he was unwell and he has previous medical documents to show the Court.

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

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit. 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 submitted by the applicant that he was not in good condition hence he found himself

out of time to lodge an appeal before this Court. The illness of the applicant is forcefully challenged by the respondent that during the hearing of the case, the applicant was in good condition. 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-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 her affidavit specifically paragraphs 9 that after the delivery of the Judgment, the applicant fell sick and could not pursue his appeal within time. I have perused his annexures and noted that the applicant attached a Medical Report dated 29<sup>th</sup> January 2023, the impugned decision was delivered in 2020. Furthermore, there is no any medical chic to confirm his previous medical treatments. Had been that the applicant proved that he attended medical checkups then it would be easier for this Court to grant his application for an extension of time based on the ground of sickness. However, since the applicant has failed to prove his allegations then it is not safe to believe that he was in poor health for more than two years.

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 because there is no any documentary evidence to support his allegations.

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 25<sup>th</sup> April 2023.



  
A.Z.MGEYEKWA

**JUDGE**

25.04.2023

Ruling delivered on 25.04. 2023 in the presence of both parties.



  
A.Z.MGEYEKWA

**JUDGE**

25.04.2023