

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

MISC LAND APPLICATION NO. 273 OF 2023
(Arising from of Temeke District Land
and Housing Tribunal Application No. 171 of 2016)

**FATUMA MOHAMED KISUGULU (By power of
Attorney of Nassoro Ubuguyu).....APPLICANT**

VERSUS

GUSTAPH KARIA.....RESPONDENT

RULING

10-14 July, 2023

E.B. LUVANDA, J

The Applicant above named is asking for extension of time to file an appeal out of time against the decision of the trial tribunal dated 27/02/2023. In the affidavit in support, the Applicant grounded delay being due to a fact that he fall sick on 05/03/2023 was admitted to hospital and thereafter attended at out patient department, as per annexure H-2. He also pleaded to have been supplied with copies of judgment belatedly.

In a counter affidavit, the Respondent stated that if Nasoro was sick, Fatuma Mohamed Kisugulu who is the claimant could file the appeal. That Temeke Hospital denied to have admitted Nasoro and the doctor alleged attended

the patient is unknown to that hospital, as per annexure GK-1. That the Applicant rushed to forge medical report upon being served with a bill of costs.

In a reply to a counter affidavit, the Applicant stated that Fatuma Kisugulu granted power of attorney to Nasoro Ubuguyu who fall sick and the former is unable to prosecute her case. The Applicant denied allegation of forging medical report. That he was supplied with copy of judgment on time. That the court clerk and chairman delayed to supply copy of judgment due to ill motive.

In his submission, the Applicant argued that he encountered health problems (sickness) as a result failed to file the appeal on time. He cited the case of **Musa & Others vs. Mwanjiru & Another**, (1970) EA 481, **Richard Mlagala & 9 Others vs. Aikael Minja & 3 Others**, Civil Application No. 160 of 2015 C.A.T.

In reply Mr. Frank Kilian learned Counsel for Respondent submitted that the argument of the Applicant who alleged to have fall sick and the same time allege to had been making follow up on judgment three times, is confusing. He submitted that the Applicant attached forged medical reports alleging that he was sick.

He submitted that there is no evidence that the court clerk had refused to supply copy of judgment to the Applicant, no report was made to the chairman and no affidavit by the alleged court clerk. He submitted that Fatuma Kisugulu and Nasoro Utuguyu are husband and wife, if the later was sick, why the former did not file the appeal. He submitted that there was lack of diligent and there was negligent on the part of the Applicant. He cited the case of **Umoja Garage vs. National Bank of Commerce** (1997) TLR, 109 for a proposition that lack of diligent on the part of the counsel is not sufficient ground for extension of time. He submitted that the Applicant submitted forged medical report which is a criminal offence. He distinguished the case of **Musa** (supra) on that the relevant hospital has proved that the Applicant was not sick. He submitted that the Applicant ought to account for each day of delay in respect of 70 days counting from 27/02/2023 to May, 2023.

The reasons for delay to file the appeal are two fold; One, delay to be supplied with the copy of judgment, allegedly applied orally. In the affidavit in support, the Applicant did not state as to when and to whom the alleged oral request was made, neither stated as to when he procured the same copy of judgment. In the reply to the counter affidavit, the Applicant alleged that the court clerk and the chairman delayed to avail the same because of

ill motive, hence delay. Still the Applicant muted to name and mention a specific clerk or chairman with alleged ill motive. This suggest that, it is non other than concoct and unfounded allegations. For another thing; the Applicant grounded delay being attributed to ailment called septic osteomyolistic (sic, osteomyelitis sepsis) as reflected in annexure H-2. Annexure H-2 suggest the Aplicant the patient named therein was attending at outpatient department from 05/03/2023 to 02/05/2023 after had surgical operation on the left knee joint. However in paragraph four of the affidavit, the Applicant allege he was admitted on 05/03/2023 and at the same time allege he used to attend at outpatient department from the same date to wit 05/03/2023. In annexure H-2 a fact that the patient mentioned therein was admitted, is missing. I am saying the patient named in annexure H-2, because the alleged annexure H-2 reflect the name of Nassoro Omary Said, who is a different person with the one ordained in the power of attorney to wit Nassoro Ubuguyu. Indeed even the affidavit in support was affirmed by the alleged Nassoro Omary Said who is a stranger to the proceedings of the lower tribunal. In a letter from the Director Temeke Regional Referral Hospital, disowned to have attended the purported Nassoro Omary Said, as his name is missing in the records and system of the hospital. The Director also dispelled the address, a report itself, including the purported medical

officer named therein. In fact the authenticity of the purported medical report annexure H-2, is at stake, hence unreliable. Therefore, the argument of the learned counsel for Respondent that the Applicant failed to account a period of 72 days from 27/02/2023 when judgment was pronounced to 10/05/2023 when this application was filed, is valid.

The application is dismissed with costs.



E.B. LUVANDA
JUDGE
14/07/2023