

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

**MISC. LAND APPLICATION NO. 291 OF 2023**

*(Arising from the decision of the District Land and Housing Tribunal for Kigamboni  
District at Kigamboni in Land Application No. 10 of 2022)*

**AMIRI OMARI PEMBELIMO** (Administrator of Estate  
of **MOSI SELEMANI SHIKAKA**) ..... **APPLICANT**

**VERSUS**

**EMMANUEL JOHN SABA** ..... **RESPONDENT**

*Date of last Hearing: 14/07/2023*

*Date of Ruling: 10/08/2023*

**RULING**

**I. ARUFANI, J**

The applicant filed in this court the application at hand seeking for extension of time to file appeal in this court out of time to challenge the judgment and decree issued by the District Land and House Tribunal for Kigamboni District at Kigamboni (Henceforth; the tribunal) delivered in Land Application No. 10 of 2022. The application is made under section 41 (2) of the Land Disputes Courts Act [Cap 216 R.E 2019].

The application is supported by an affidavit affirmed by the applicant and is opposed by a counter affidavit sworn by the respondent. When the application came for hearing the applicant appeared in the court in person and the respondent was represented by Mr. Alphonse Katemi, learned advocate.

In arguing the application, the applicant told the court he delayed to file his appeal in the court within the time prescribed by the law because he was sick. He said he was admitted at Kilwa Road Police Hospital on 15<sup>th</sup> January, 2023 and after being discharged he was told he was required to avoid engaging himself into hard works or walking long distance. He said he was also required to attend clinic and proceeded with the clinic until 28<sup>th</sup> April, 2023 when he recovered from his sickness. He said after recovering he started the process of preparing the present application which was filed in the court on 17<sup>th</sup> May, 2023.

In his reply the counsel for the respondent prayed to adopt the counter affidavit of the respondent as part of his submission and told the court that, the decision which the applicant is seeking for extension of time to appeal against was delivered by the tribunal on 22<sup>nd</sup> November, 2022. He said if it is true that the applicant was admitted in the hospital on 15<sup>th</sup> January, 2023 it is crystal clear that by the time the applicant was admitted in the hospital he was already out of time. He said the applicant was required to lodge his appeal in the court within 45 days from the date of delivery of the impugned judgment and the decree.

He argued that, the applicant has not stated in his affidavit what caused him to fail to file his appeal in the court from when the judgment of the tribunal was delivered until when the time of lodging his appeal in

the court expired. He went on arguing that, the applicant has also not stated what he was doing from 28<sup>th</sup> April, 2023 when he was told he had recovered until 17<sup>th</sup> May, 2023 when the present application was filed in the court. He said filing of the present application in the court is an afterthought.

He submitted that the law requires the applicant to account for the whole period of the delay and added that the applicant has failed to account for all period of the delay. He based on the above stated reasons to submit the application is baseless and prayed the application be dismissed with costs.

In his brief rejoinder the applicant reiterated what he stated in his submission in chief that he was delayed by sickness to file his appeal in the court within the time prescribed by the law. He said his delay was not intentionally.

After considering the submissions from both sides and after going through the affidavit and counter affidavit filed in the court by the parties the court has found the issue to determine in this application is whether the applicant is entitled to be granted extension of time is seeking from the court. The court has found in order for the applicant to be granted the order is seeking from the court, the court must be satisfied there is a good cause for granting him the sought order.

The court has come to the stated finding after seeing section 41 (2) of the Land Disputes Courts Act upon which the present application is made empowers the court to grant extension of time where good cause for granting the same has been shown. The court has found it is also a settled position of the law that, the term good cause stated in the foregoing cited provision of the law is not defined in any statute.

However, in determine whether there is a good cause for granting extension of time there are number of factors which have been laid down by our courts in numerous cases which are supposed to be considered. One of the cases where the stated factors were stated is the case of **Jacob Shija V. M/S Regent Food & Drinks Limited & Another** Civil Application No.440/08 of 2017, CAT At Mwanza (unreported) where it was held that: -

*"What amount to good cause cannot be laid by any hard and fast rule but are dependent upon the fact obtained in each particular case, that is each case will be decided on its own merits of course taking into consideration the question, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been accounted for, the reason for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant".*

The factors stated in the above quoted case are almost similar to the factors stated in the cases of **Lyamuya Construction Company Limited V. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where when the Court of Appeal was dealing with an application for extension of time it stated as follows: -

*"(a)The applicant must account for all the period of delay, (b) The delay should not be inordinate, (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and (d) If the court feels that there are 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."*

While being guided by the factors or principles stated in the above cited cases the court has found the applicant deposed in his affidavit that, the major reason for his delay to appeal against the decision of the tribunal within the time prescribed by the law is sickness. The court has found the applicant states at paragraph 4 of his affidavit that after being supplied with the copy of the judgment by the tribunal he encountered health problems and on 15<sup>th</sup> January, 2023 he was admitted at Kilwa Road Police Hospital.

He states further at paragraphs 5 and 6 of his affidavits that, he was discharged from the hospital on 25<sup>th</sup> January, 2023 and told he was

required to attend clinics. He states further that, he was told he should not engage himself in hard works, he should avoid walking long distance, and he was required to rest for many hours. He said he started attending clinic from 28<sup>th</sup> January, 2023 and continued until 28<sup>th</sup> April, 2023 when he was found he had recovered from his health problems. In supporting his deposition, the applicant annexed the copies of the hospital cards on his affidavit.

The court has found position of the law as stated in number of cases is that, sickness of an applicant of extension of time when substantiated is a good cause for granting extension of time. However, court has found it was stated in the case of **Shembilu Shefaya V. Omary Ally**, [1992] TLR 245 that, in order for sickness to be accepted as a cause for granting extension of time there must be evidence to show the applicant was sick and incapable of taking the step, he was required to take throughout the alleged period of sickness.

The question to ask here is whether the applicant was sick throughout the period of the delay. The court has found as rightly argued by the counsel for the respondent and as provided under section 41 (2) of the Land Disputes Courts Act the applicant was required to institute his appeal in the court within forty five (45) days after the date of delivery of the impugned decision of the tribunal. That being the period of time within

which the applicant ought to institute his appeal in the court, the court has found as the decision of the tribunal was delivered on 22<sup>nd</sup> November, 2022 the applicant ought to institute his appeal in the court by 6<sup>th</sup> January, 2023.

That being the period within which the applicant was required to institute his appeal in the court, then as rightly argued by the counsel for the respondent the applicant has not stated what caused him to fail to file his appeal in the court within the period of time, he was required to file his appeal in the court. The court has come to the stated finding after seeing the applicant stated he encountered health problem on 15<sup>th</sup> January, 2023 which was after the period of instituting his appeal in the court had expired on 6<sup>th</sup> January, 2023.

The court has been of the view that, although the applicant stated at paragraph 4 of his affidavit that after obtaining the copy of the judgment of the tribunal, he encountered health problems but he has not stated anywhere in his affidavit or submission as to when he obtained the copy of the impugned. It is the view of this court that, even if it will be taken the applicant was delayed to file his appeal in the court within the time prescribed by the law as he delayed to obtain the copy of judgment of the tribunal but he was required to established he sought to be supplied with the stated copy of the judgment and when it was supplied to him to

move the court to find the time he was waiting to be supplied with the judgment of the tribunal is supposed to be excluded from the time of lodging his appeal in the court.

The stated view of this court is getting support from the case of **The Registered Trustees of Marian Faith Healing Centre @ Wanamaombi V. the Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007, CAT (Unreported) cited in the case of **Valerie McGivern V. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019 where the Court of Appeal stated in the latter case as follows: -

*"Suffice to say, section 19 (2) of LLA and the holding in the decision cited above (Wanamaombi's case) reinforce the principle that, computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced the appellant obtains a copy of the decree or order appealed by excluding the time spent in obtaining such decree or order. **However, it must be understood that section 19 (2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of appeal.**"*

[Emphasis added].

From the wording of the above quoted excerpt, it is crystal clear that, although the time spent in awaiting to be supplied with the copy of the impugned decision is supposed to be excluded from the period of time



of lodging appeal in the court and the time is countered to have reckoned from the date of being supplied with the copy of the impugned decision but the applicant cannot benefit from the stated exclusion. The court has come to the stated view after seeing the applicant has not stated anywhere in his affidavit or submission he applied for the copy of the judgment of the tribunal and he has also not stated when he was supplied with the stated document.

That caused the court to come to the finding that, although the applicant has managed to establish, he was hindered by health problems to take action against the impugned decision of the tribunal from 15<sup>th</sup> January, 2023 until 28<sup>th</sup> April, 2023, but as rightly argued by the counsel for the respondent the applicant has not accounted for the period of the delay from when the judgment was delivered on 22<sup>nd</sup> November, 2022 until when he encountered the health problems on 15<sup>th</sup> January, 2023. The court has found it was stated in the case of **Juma Shomari V. Kabwere Mambo**, Civil Application No. 330/17 of 2020, CAT at DSM (unreported) that: -

*"It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application."*

Since the applicant in the present application has not accounted for the period from when the impugned judgment was delivered until when he encountered the stated health problem and as there is no any other good cause which can move the court to exercise its discretionary power to grant the applicant extension of time is seeking from this court, the court has found there is no way it can be said the application of the applicant can succeed.

Consequently, the application of the applicant is dismissed in its entirety for being devoid of merit and costs to follow the event. It is so ordered

Dated at Dar es Salaam this 10<sup>th</sup> day of August, 2023.



*I. Arufani*  
I. Arufani  
**JUDGE**  
10/08/2023

**Court:**

Ruling delivered today 10<sup>th</sup> day of August, 2023 in the presence of both parties in person. Right of appeal to the Court of Appeal is fully explained to the parties.



*I. Arufani*  
I. Arufani  
**JUDGE**  
10/08/2023