

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

MISCELLANEOUS LAND APPLICATION NO. 42 OF 2023

(Arising from Land Application No. 313 of 2020 dated 03/10/2022 by A.R Kirumbi, Chairman at Ilala District Land and Housing Tribunal)

RESPICIUS MTABINGWA KAJURA APPLICANT

VERSUS

ABDALLAH HASSAN DOGORI..... RESPONDENT

R U L I N G

Date of last Order:22/06/2023

Date of Ruling: 9/08/2023

K. D. MHINA, J.

In the instant application, the applicant, Respicius Mtabingwa Kajura, moves this Court to extend the time within which to lodge a petition of appeal to this Court against the decision of the District Land and Housing Tribunal ("the DLHT") for Ilala delivered on 3 October 2022 in Land Application No 303 of 2020.

The application has been brought by way of chamber summons made under Section 41 (2) of the Land Disputes Courts Act, R.E. 2019. It is supported by an affidavit duly sworn by Respicius Mtabingwa Kajura, the applicant.

The ground of the delay expounded in the affidavit is that the applicant was sick and admitted at Muhimbili National Hospital from 16 October 2022 to 7 January 2023.

The application was argued by way of written submissions. While the applicant was unrepresented, the respondent was represented by Mr. Alex Dotto Massaba learned Advocate.

In supporting the application, the applicant submitted that he suffered from a strange disease and was admitted to the Hospital from 16 October 2022 to 7 January 2023, when he was discharged, but he was required to rest for 14 days. Therefore, he resumed his normal routine on 21 January 2023.

On 21 January 2023, he approached Advocate Josephine Raymond Assenga, who informed him that he was out of time to file an appeal. Therefore, this application was prepared, he signed it on 27 January 2023, and it was filed three days later.

In rebuttal, Mr. Massaba resisted the application by submitting that the law under section 41 (1) of the Land Disputes Courts Act, the period to appeal from the LDHT to the High Court is 45 days. But the applicant took about 119 days to file the instant application, therefore he ought to account for each day of delay as per the decision of the Court of Appeal

in **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported).

He further submitted that; one, the applicant had failed to adduce any good cause because his delay amounted to negligence.

Two, the applicant could file the appeal in the first two weeks from 4-15 October 2022, before he fell sick.

Three, the medical report attached to the affidavit is not a not sufficient, questionable and with doubts as it was not corroborated with other documents such as EFD machine receipts and medical examination report.

In a brief rejoinder, the applicant reiterated that he fell ill of the strange disease and that when the copy of the judgment was ready for collection, he was already bed ridden.

Having considered the chamber summons and it's supporting affidavit, the affidavits in reply, and the submissions made by the learned counsel for the parties, the issue that has to be resolved is whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to file leave to appeal.

The Court of Appeal of Tanzania in **Benedict Mumello v Bank of Tanzania**, Civil Appeal No 12 of 2012, (Unreported) held that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

First of all, it should be noted that according to section 41 (1) of the LDCA, the appeal was supposed to be filed within 45 days from the date Tribunal decision, which is 3 October 2022. Counting 45 days from that date, the appeal was supposed to be filed on 18 November 2022.

In the instant application, the only ground advanced by the applicant is that he was sick suffering from a strange disease. To support his assertion, he attached the medical report to his affidavit.

Generally, it is trite that sickness is one of the good grounds for an extension of time. The Court of Appeal in **Emmanuel Maira vs. The District Executive Director Bunda District Council**, Civil Application No. 66 Of 2010 (unreported) held that

".... health matters, in most cases, are not the choice of human being, cannot be shelved and nor can anyone be held to blame when they strike..."

But, **one**, as it was held in **Juto Ally v. Lucas Komba & Another, Civil Application No. 484/17 of 2017** (Unreported), a party pleading illness must show how it contributed to the delay. The Court of Appeal held that: -

"Where the applicant's cause of delay is due to illness, must show that illness contributed to the delay as opposed to a general statement."

Two, there must be sufficient evidence that a party pleading with illness as a ground for extending time was sick.

The two above are very essential in invoking the discretion of this court to extend time.

In this matter, the applicant attached to his affidavit the medical report indicating that he was admitted to Muhimbili National Hospital on 16 October 2022 and was discharged on 7 January 2023. Further, the report indicated that after investigations done through FBP, CCP, C-RP, LTF and MRI, the applicant was diagnosed to have white matter diseases. The report was dated 16 October 2022.

From the above narration and after critically examining the medical report, it is insufficient and doubtful, and my reasons are as follows;

One, while the report indicated that the applicant was discharged on 7 January 2023, but the report itself was written on 16 October 2022. That means it was prepared on the date, even before the applicant was discharged, but, in the content, it had a discharge date.

Two, in the circumstances of this matter where the medical report is doubtful, the findings of the investigations done were very important to be attached to the medical report. For instance, the findings of the MRI and all investigations mentioned in the medical report it was important to attach with the medical report to substantiate what was written in the medical report.

Three, if the applicant was admitted and discharged, the essential document is the discharge summary form. This is key because it clearly indicates when a person is admitted and discharged and the continuation of treatment after discharge. In the circumstances of this matter, the report attached addressed to "*whom it may concern*" I think it should be backed up by the discharge summary form.

Flowing from the above discussion, the applicant's reason for sickness is not backed by any sufficient evidence. Therefore, the issue of sickness lacks merit.

Since sickness was the only ground in this application it is therefore, the applicant has failed to account for each day of delay from 3 October 2022, when the decision of DLHT was delivered, up to 30 January 2023 when this application was filed.

In the upshot and from the above explanations, the applicant has failed to show good cause to persuade this court to extend the time to file an appeal to this Court against the decision of the District Land and Housing Tribunal ("the DLHT") for Ilala delivered on 3 October 2022 in Land Application No 303 of 2020.

For the reasons above, I find no merit in this application, and consequently, I dismiss it with costs.

It is so ordered.




K. D. MHINA

JUDGE

09/08/2023