

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 372 OF 2023

(Arising from the decision of the High Court of Tanzania at Dar es Salaam in Misc. Land Appeal No.154 of 2019 delivered on 7th May 2020)

ALLY ABBASI..... APPLICANT

VERSUS

NURU MAPUNDA.....RESPONDENT

RULING

18th & 25th August, 2023

L.HEMED, J.

ALLY ABBASI, the Applicant, lodged the instantaneous Application on 21st June 2023, *inter alia* seeking for extension of time within which to file notice of appeal against the decision of this Court in Misc. Land Appeal No.154 of 2019 (**Hon. S.M. Maghimbi, J**) delivered on 7th day of May 2020. In the said decision my sister at the bench, allowed the appeal which was instituted by the respondent herein, **NURU MAPUNDA** who was challenging the decision of the District Land and Housing Tribunal for Morogoro in Land Case Appeal No.110 of 2017. It appears that the

Applicant was aggrieved by the said decision, but could not process the appeal in time hence the instant application. The application was supported by the affidavit deposed by one **ALLY ABBASI** and contested by the counter affidavit of one **NURU MAPUNDA**.

The application was heard *viva voce* on 18th August 2023 *via* video conference. Parties argued for and/or against the application in person. The Applicant argued that the main cause for the delay in lodging notice of appeal is sickness. He asserted that since the pronouncement of judgment the applicant got sick that he could not proceed with the appeal process.

In reply thereto the respondent disputed the assertion made by the applicant. She contended that it is not true that the applicant became ill all the time that he could not file the notice of appeal in time. She stated that the instant application is aimed at preventing the execution process of the decree. She argued the court to dismiss the application.

I have extensively scrutinized the rival submissions and the contents of the affidavits for purposes of finding out if the application has merits. This application has been made under section 11(1) of the Appellate Jurisdiction Act, [Cap 141 RE 2019]. The said provision does not specifically

provide for what to be considered when determining whether to grant extension of time. The provision uses the words "...**may extend..**" vesting discretion powers to the court. Extension of time is thus the function of discretion of the court which has to be exercised judiciously.

It is settled that where extension of time is sought, the application will be granted, upon the applicant having demonstrated sufficient cause for the delay. What amounts to sufficient cause was defined in **Tanga Cement Company Ltd vs Jumanne D. Masangwa and Amos A.Mwalwanda**, Civil Application No.6 of 2001, the Court of Appeal of Tanzania had this to say:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."

I have gone through the Affidavit of the Applicant and found the reason for the delay being stated in paragraph 8 thus:

"8. That, with less knowledge of the procedures, the Applicant failed to file a Notice of Appeal so that to appeal at the Court of Appeal of Tanzania within time because of hindrance incurred which was sickness, since the judgment was pronounced the Applicant fell sick and could not be capable to pursue with the appeal process..."(sic)

I am aware that sickness is one of the grounds for extension of time. However, for the court to grant extension of time on the ground of sickness, it must be proved that, such illness prevented the applicant from acting promptly. I have examined Annexure "AB4" and "AB5" to the affidavit of the applicant and found that Annexure "AB4" is a letter purported to be authored by **MUHIMBILI NATIONAL HOSPITAL** and appears to have been signed on 29/01/2023 by one DR. KIHIO B.NJAU MD. Annexure "AB5" is a Referral Form, from **FOROM MMJ(UAS)** to **Lugalo Hospital** dated 31/01/2011.

The letter ("AB4") which was addressed **"TO WHOM IT MAY CONCERN"** appears to convey the medical report of one **Ally Abbas Mohamed**. According to the said report, it was planned that on 11th May

2023 the person named in the said letter would have been admitted. The question is whether the said ground of sickness on the part of the applicant is sufficient to grant the application at hand.

As previously pointed out, the impugned judgment of this court regarding Misc. Land Case Appeal No.154 of 2019 was delivered on 07th day of May 2020. The affidavit that supports the application shows that the applicant attended Hospital in January, 2023, almost three (3) years from the date when the impugned judgment was delivered. It is settled principle that an applicant who seeks for extension of time must account for each day of the delay. The Court of Appeal of Tanzania in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No.3 of 2007 held that:

"Delay, of even a single day, has to be accounted for otherwise there would be no proof of having rules periods within which certain steps have to be taken"

Going through the entire affidavit of the applicant, I could not find anywhere stated as to what the applicant was doing between on 07th May,

2020 and January 2023. The applicant has not accounted for the delay in the whole period from 07th May, 2020 up to January 2023 when he attended hospital for medical attention. I am of the firm view that delay for more than two (2) years is quite inordinate and is intolerable. It implies the extent of negligence and sloppiness on the part of the applicant in pursuing his matter. I am guided by the decision of the Court of Appeal of Tanzania in **Lyamuya Construction Company Ltd. vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 where it provided the guidelines to the court in determining applications like the one at hand. Among the guidelines were such that:

"(a)...

(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.

(d)..."

From the foregoing, I find no merits in the application. I do hereby proceed to dismiss the entire application with costs. It is so ordered.

DATED at **DAR ES SALAAM** this 25th August 2023




L. HEMED
JUDGE