

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

**MISC LAND APPLICATION NO. 487 OF 2023**

**FAUSTINE JOSEPH MALLYA.....APPLICANT**

***VERSUS***

**THE REGISTRAR OF TITLES.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

12/09/2023 to 15/09/2023

**E.B. LUVANDA, J**

The Applicant above mention is seeking for extension of time to lodge a notice and petition of appeal. The main ground for delay is premised on a fact that he was sick, as per paragraph six of and annexure HM5 (medical chit) to the affidavit in support of the application.

In the counter affidavit, the Respondent neither noted nor denied this fact.

In the submission in chief, Mr. Hisani Mtolela learned Counsel for Applicant submitted that the Applicant was unable to file a notice and petition on time due to sickness, which incapacitated him for thirty days as per annexure HM5 to the affidavit.

In reply, Mr. Kause K. Izina learned State attorney, submitted that the Applicant failed to disclose good reason that may warrant this court to

extend time as the Applicant failed to act with due diligence in prosecuting his case. She submitted that counting from the date of notice of rectification on 07/12/2022 to the date of filing this application on 09/08/2023, 155 days lapsed. She submitted that there was uncounted delay of 63 days from 07/03/2023 to 06/06/2023 when a grace period of three months to appeal, expired. She submitted that annexure HM5 reveal the Applicant attended hospital on 12/03/2023, 10/02/2023 and 18/02/2023, but does not state anything about being hospitalized, rather they are laboratory investigation forms and prescriptions form. She submitted that the Applicant information connecting to his sickness it is clearly that by the time he attended hospital he was still within time to file this application. She submitted that a statement that the Applicant was hospitalized from 18<sup>th</sup> January, to 12<sup>th</sup> March, 2023 are submissions from the bar.

According to annexure HM5 to the affidavit which were not contested in the counter affidavit, reveal that the Applicant was diagnosed on 18/01/2023, 10/02/2023 and 12/03/2023, for hypertension (HTN) and typhoid fever. Now, as to the extent and seriousness of sickness and how so far it hampered him to engage on work, is a matter of concern and opinion of the physician. Suffices to say in the counter affidavit, the Respondent did not depose any useful material to task the Applicant to reveal more details of his

sickness. Instead the Respondent averred that she neither note or deny, which by necessary implication, in the rules of pleading is taken to amount to concession. Save for the explanation that the Applicant was hospitalized on the dates mentioned above, which fact I allude to the submission of the learned State Attorney, that it was a statement from the bar, therefore unreliable and cannot be acted upon. However the question of sickness on the part of the Applicant was not challenged by the Respondent.

I therefore rule that sufficient cause for delay have been established by the Applicant.

The Applicant is granted an extension of fourteen days to lodge a notice and petition of appeal.

The Application is granted. No order for costs.



E.B. LUVANDA  
**JUDGE**  
15/09/2023

Ruling delivered via virtual court attended by Ms. Kause Kalonzo learned State Attorney for Respondents and in the absence of the Applicant.



E.B. LUVANDA  
**JUDGE**  
15/09/2023