

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

MISC LAND APPLICATION NO. 470 OF 2023
(Arising from Misc. Land Application No. 639 of 2023)

TWAHA WAZIRI MBWAMBO.....APPLICANT

VERSUS

ABDUL LWALA.....RESPONDENT

RULING

28/09/2023 to 04/10/2023

E.B. LUVANDA, J

In this application there are two prayers or reliefs: extension of time within which to file notice of appeal and an application for leave to appeal to the Court of Appeal against the ruling of this Court in Misc. Land Application No. 639/2018 dated 20/12/2019. The reasons for the delay are two fold: one technical delay in prosecution Civil Appeal No. 103/2020 which was struck out on 13/13/2023 by the Court of Appeal for want of leave; Misc. Land Application No. 142/2023 for extension of time to file an application for leave was dismissed by this Court on 31/05/2023.

Two, illment which the Applicant allege detained him in the house up to 25/07/2023, as per outpatient record annexure TWM-7 to the affidavit.

In the counter affidavit, the Respondent stated that the Applicant failed to account the fifteen days from 31/05/2023 when ruling in Misc. Land Application No. 142/2023 was delivered to the date of attending medication, also failed to account thirty nine days from the date of medication up to 25/07/2023 when he gave instructions to his advocate. He stated that the Applicant failed to account for each day of delay nor provided for sufficient cause for extension of time.

In a reply to the counter affidavit, the Applicant stated that his sickness was proved by medical report and records of dispensary where he was diagnosed with several health issues and treatment. He asserted to had accounted for each day of delay along with sufficient reasons for extension of time.

Mr. Wilson Edward Ogunde learned Counsel for Applicant submitted that the whole period of almost four years from 20/12/2019 when the impugned ruling was delivered to 28/07/2023 when this application was filed, have been accounted for in paragraphs four, five, six and seven of the affidavit in support, covering the time when he was prosecuting other course also sickness after delivery of a ruling in Misc. Land Application No 142/2023.

In reply, the Respondent opposed the application for a ground that the Applicant has failed to account for the delay of fifty eight days, argued that

the Applicant managed to account only a single day on 15/06/2023. He cited the case of **Bruno Wenceslaus Nyalifa vs. Permanent Secretary Ministry of Home Affairs & Another** [2018] TLR 58; **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3/2007 CAT.

Arguably, the general rule is that each day of delay must be accounted for.

In **Bushiri Hassan** (supra), the apex Court held, I quote,

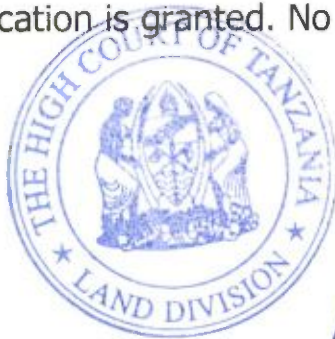
"Delay of even a single day has to be accounted for otherwise there would be no proof of having rule prescribing periods within which certain steps have to be taken".

Herein, the Applicant pleaded technical delay from 20/12/2019 when the impugned ruling was delivered where he embarked on taking essential steps to appeal against it and filed within time Civil Appeal No. 103/2020 which ended with eventuality of being struck out on 13/03/2023 for want of leave to appeal. He pleaded to had commenced a process of appealing afresh by filing Misc. Land Application No. 142/2023 which was dismissed on 31/05/2023. Thereafter he allege to have fallen sick and attended medication as outpatient as per medical chit. Now, as to the question of severity of illness is an exclusive domain of the physician who attended the patient and the patient who was undergoing treatment. Suffices to say technical delay

and illment were well grounded to cover the period of delay in filing this application.

I therefore grant extension of time for the Applicant to lodge a notice of appeal and an application for leave to appeal against the decision dated 20/12/2019 in Misc. Land Application No. 639/2018. The extension will be for fourteen days, running from the date hereof.

The application is granted. No order for costs.



E.B. LUVANDA
JUDGE
04/10/2023

Ruling delivered in the presence of the Applicant and the Respondent in person.



E.B. LUVANDA
JUDGE
04/10/2023