

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISCELLANEOUS LAND APPLICATION NO.390 OF 2023**

*(Arising from the Judgment and Decree of the District Land and Housing Tribunal for Kinondoni at Mwananyamala, in Application No.342 of 2019 dated 27<sup>th</sup> October,2022)*

**KHADIJA SAID MTWANJE ..... APPLICANT**

***VERSUS***

**TANZANIA COMMERCIAL BANK**

**(Formerly TANZANIA POSTAL BANK) ..... 1<sup>ST</sup> RESPONDENT**

**AZIZ YAHAYA KAI .....2<sup>ND</sup> RESPONDENT**

**RULING**

*22<sup>nd</sup> August 2023 & 6<sup>th</sup> October 2023*

**L. HEMED, J.**

By Chamber summons made under section 41(2) of the Land Disputes Courts Act [Cap. 216 R.E 2019], the Applicant herein instituted this application against respondents, seeking for the following orders: -

*“(i) That this honorable court be pleased to grant the Applicant extension of time to file*

*an appeal out of time against the judgment and decree of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Case No. 342 of 2019 dated 27<sup>th</sup> October, 2022*

*(ii) Costs of this application be provided.*

*(iii) That, any other orders and reliefs this Honourable Court may deem fit to grant.”*

The application was supported by the affidavit deponed by the applicant and was opposed by the counter affidavit of **SALUM MASOUD LINA**, the Principal Officer of the 1<sup>st</sup> respondent. Hearing of the application was by way of written submissions, where, **Ms. Grace Daffa**, advocate, represented the applicant, while the 1<sup>st</sup> respondent was represented by **Ms. Adeline Elisei**, state attorney. The 2<sup>nd</sup> respondent failed to appear in court, therefore the matter proceeded *ex parte* against him.

In her submissions in chief, **Ms. Daffa** stated that, the cause of the delay was sickness of the sister of the applicant. It was stated that, while she was looking for a lawyer to help her process the intended appeal, on 04<sup>th</sup> November 2022, she received unpleasant news that her elder sister, one Zalia Mtwanje was terribly ill, suffering from hypertensive emergency with stroke. The applicant being the only one who could take care of her,

on 05<sup>th</sup> November 2022, she travelled to Kilwa, in Lindi region, to look after her.

She asserted that, the health condition of the applicant's sister did not improve earlier as expected by the applicant. Since she could not abandon her sister in such acritical condition, she was forced to stay in Kilwa Lindi, until when her sister got better by 30<sup>th</sup> March 2023, when she was able to return to Dar es Salaam.

Ms. Daffa submitted that, soon upon her return to Dar es Salaam from Kilwa, in course of searching for a lawyer to assist her process the appeal, on the 3<sup>rd</sup> April, 2023, she was involved in a car accident where both of her legs were seriously injured that she could not walk. Due to such accident, she had to be at home bed ridden for more than two months until mid of June 2023, when she was able to walk again by the help of crutches. She could not get a lawyer timely due to lack of finance as all lawyers that the applicant approached demanded payment that she could not afford.

She argued that, it was until 19<sup>th</sup> June, 2023, when the applicant heard about Women's Legal Aid Centre (WLAC) from a friend and visited its office on the same day. WLAC advised her that the judgement and decree had illegalities that called for appeal but the time to institute the same had

been lapsed, hence she was advised to institute the instant application, which was filed in this court on 26<sup>th</sup> June 2023.

Another cause of delay submitted by the counsel for the applicant is the illegality apparent on the face of the impugned decision. She stated that, the applicant was denied her right to be heard since all of her evidence was never taken into account by the trial tribunal.

The counsel for the applicant urged the court to find that sufficient cause has been demonstrated and apply its discretion powers to extend time to the appellant. She referred to the case of **Alliance Insurance Corporation vs Arusha Art Limited**, Civil Application No. 512 of 2016 CAT and **Nicholaus Mwaipyana vs The Registered Trustees of the Little Sisters of Jesus Tanzania**, Civil Application No. 535/8 of 2018, CAT at Mwanza.

Replying to the submissions in chief, Ms. Elisei referred to the case of **Elius Mwakalinga vs Domina Kagaruki and others**, Civil Application No. 120/17 of 2018. In the said case the Court of Appeal of Tanzania gave the following factors to consider when granting extension of time:-

- (a) The length of the delay*
- (b) The reason for the delay*

*(c) Whether there is arguable case such as whether is a point of law on the illegality or otherwise of the decision sought to be challenged.*

*(d) The degree of prejudice to the defendant if the application is granted.*

Starting with the length of delay, Ms. Elisei submitted that, the impugned judgment was delivered on 27<sup>th</sup> October, 2022. The current application was filed in this court on 30<sup>th</sup> June, 2023, being 6 months and 2 weeks later. She referred to the case of **Sebastian Ndaula vs Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa)** and stated that, the applicant has not accounted for every day of the delay as no report showing the activities of the applicant regarding attending her sick sister all the days from 28<sup>th</sup> November, 2022 to 29<sup>th</sup> March, 2023.

She further argued that, the applicant did not account for each day of the delay from 04<sup>th</sup> April, 2023 to 19<sup>th</sup> June, 2023 when she went for legal aid. After getting the legal aid, the applicant spent 11 more days before filing the application. She doubted if the applicant really got legal aid on 19<sup>th</sup> June, 2023 because no evidence was produced to prove the same.

Regarding the reasons for delay, Ms. Elisei submitted that, the reason advanced by the applicant that she was bed ridden as the result of the

accident was not supported by any evidence. She stated that, evidence of sickness is only on the day of accident where she attended treatment on 3<sup>rd</sup> April, 2023, which does not show if the applicant was exempted and was expired from duties.

As to the point of illegality, Ms. Elisei argued that, the applicant was properly heard and her evidence was properly evaluated and therefore no any illegality on the face of the records as claimed. She referred to the case of **Magnet Construction Limited vs Bruce Wallace Jones**, Civil Appeal No. 459, (CAT) **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, (CAT) and **Tanzania Harbors Authority vs Mohamed R. Mohamed** (2003) T.L.R 76 to bolster his argument. She concluded by praying for the dismissal of the application with costs.

In rejoinder submissions, Ms. Daffa reiterated her submission in chief and prayed for the orders sought in the chamber summons to be granted.

Having considered the rival affidavits, and submissions, the issue that has to be resolved is whether the applicant has shown good cause for this court to grant extension of time to file appeal.

The position of the law is certain and clear that extension of time is entirely in the discretion of the court. However, that discretion is judicial and so it must be exercised judiciously.

Further, the said discretion can be exercised by the court in favour of the applicant only if he/she has shown good cause for the delay. As to what constitutes a good cause, the Court of Appeal of Tanzania in **Elius Mwakalinga vs Domina Kagaruki and others**, Civil Application No. 120/17 of 2018 pointed out the following factors: -

*"(a) The length of delay*

*(b) The reason for the delay*

*(c) Whether there is arguable case such as whether there is a point of law on the illegality or otherwise of the decision sought to be challenged*

*(d) The degree of prejudice to the defendant if the application is granted."*

Regarding the factors of the length of delay, the Court of Appeal in the case of **Hassan Bushiri vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (Unreported) held that;

*"Delay of even a single day has to be accounted for, otherwise there would be no point of having rules*

*prescribing periods within which certain steps have to be taken.”*

The records reveal that, the decision which is subject of the appeal was delivered by the trial Tribunal on 27<sup>th</sup> October, 2022 and the applicant collected the copies of the judgment and decree on the 2<sup>nd</sup> November, 2022. From the wording of section 41(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019], the applicant had 45 days to appeal to this court counting from 02<sup>nd</sup> November, 2022 to 16<sup>th</sup> December, 2022. Having failed to file an appeal in time, the applicant was to account for each day of delay from 2<sup>nd</sup> November, 2022 when she collected the copies of judgment and decree to 30<sup>th</sup> June, 2023, when she filed this application.

In accounting for the period of delay, the applicant stated that, after obtaining the copies of the judgment and decree, she started looking for a lawyer with no success. However, no evidence has been tendered by the applicant to prove such assertion. Additionally, no evidence has been availed to the court to prove that the applicant went to the office of WLAC on 19<sup>th</sup> June, 2023 for legal aid. Further, even if she could have got a lawyer on 19<sup>th</sup> June, 2023, the applicant still spent other 11 days before filing this application. It is therefore my findings that, the applicant has



failed to account for each day of the delay caused by the efforts of looking for a lawyer to represent her.

Regarding the reason of sickness, being both the sickness of herself and that of her sister, the applicant stated that, on 05<sup>th</sup> November, 2022, she travelled to Kilwa to take care of her sick sister who was suffering from hypertensive emergency with stroke. To prove that allegation, she presented a letter from Kinyonga District Hospital, Kilwa, addressed to "whom it may concern" with the heading "**RE: MEDICAL REPORT OF ZALIA HASANI MATWANJE....**" Instead of presenting the medical chit. What the applicant presented was a mere letter, that in my view, it was prepared for purposes of this application.

I have taken this position because a patient who visit hospital or medical facility for purposes of medical attention, is normally issued with medical chit and not the letter as in this case. I do subscribe to what my learned fellow at the bench Hon. Fikirini, J. (as she then was) who observed in **Mantrac Tanzania Limited vs Junior Construction Company Limited & 3 Others**, Commercial Case No. 10 of 2017 at page 17 thus:

*"Ordinarily, any hospital visit if it is for medical attention, the documentation is not in the form of the*

*letter supplied to this court. ....There is a medical chit with diagnosis and prescription, without a "to whom it may concern" heading or "Ref..... what was supplied to court is a letter presumably following the medical attention and not diagnosis or prescription on chit. The letter in itself does not at all prove that the witness attended hospital."*

Having considered the observation of the above cited case, I hereby find that in the absence of the medical chit, which proves medical attention, diagnosis or prescription of the patient, the letter presented by the applicant does not prove that her sister was sick and that she was admitted at Kinyonga District Hospital, at Kilwa.

As to the reason of her sickness caused by the accident, there is no dispute as to the occurrence of the accident on 3<sup>rd</sup> April, 2023 as it was proved by the Police Medical Examination Report, the Diagnostic Investigation Form and the Prescription Form. However, the hospital records show that the applicant was attended at Mnazi Mmoja Hospital on 03<sup>rd</sup> April, 2023 as an outpatient. No further evidence was adduced to prove that the applicant continued to receive treatment or was bed ridden or incapacitated from the date of the accident to the date of filing this

application. In the case of **Juto Ally vs Lucas Komba & Another**, Civil Application No. 484 of 2017 (Unreported), 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 general statement."*

From the above observation, it is my findings that, the applicant has failed to prove that the accident contributed to the delay in filing the appeal.

Another ground advanced by the applicant for the grant of this application was illegality on the face of impugned decision. I agree with the counsel for the applicant that illegality constitutes sufficient ground for extending time. However, for illegality to constitute sufficient ground, such illegality must be apparent on the face of record. This point was emphatically stated in **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of Young Women's Association of Tanzania**, (Supra), that: -

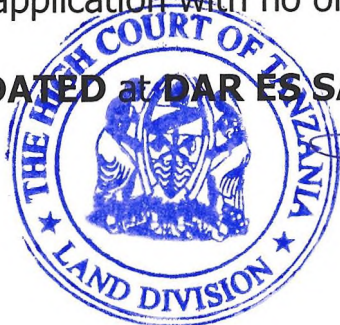
*"The Court there emphasized that such point of law must be that of sufficient importance, and I would add that it must be apparent on the face of the record, such as the question of*

*Jurisdiction, not one that would be discovered  
by a drawn argument or process.”*

The grounds of illegality raised by the applicant was that, she was denied the right to be heard. Nevertheless, the records reveal that, the applicant together with her witness one Iddi Mrisho Vagi where properly heard and the exhibit tendered was admitted. Further, the reasons stated at paragraph 18 (i) to (vi) of the affidavit, purported to be the grounds of illegality are not apparent on the face of impugned judgment, rather they require a long - drawn argument or process to be discovered. Also, the grounds raised fit for appeal which if considered, the court will be prematurely determining the appeal which is not yet before it.

From the foregoing, I find that, the applicant has failed to advance sufficient cause for failure to file her appeal timely. I hereby dismiss the entire application with no orders as to costs. It is so ordered.

**DATED at DAR ES SALAAM** this 6<sup>th</sup> day of October, 2023.



*[Handwritten Signature]*  
L. HEMED

**JUDGE**