

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

**MISC. LAND APPLICATION NO. 572 OF 2023**

*(Arising from judgment and decree of Land Case No. 99 of 2010, High Court,  
Land Division, delivered on 31/08/2016)*

**ANNA NOAH MBILU ..... APPLICANT**

**VERSUS**

**WILBARD METHREW SENGU** (Administrator of the Estate of the late  
**Methew Orestes Sengu) ..... RESPONDENT**

*Date of last order: 20/12/2023*

*Date of ruling: 05/02/2024*

**RULING**

**I. ARUFANI, J.**

The applicant lodged in this court the instant application seeking for extension of time within which to file in the court notice of appeal to the Court of Appeal out of time. The application is made under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and is supported by the affidavit of the applicant. The application was opposed by the counter affidavit affirmed by Mr. Francis Makota, learned advocate for the respondent.

When the application came for hearing on 18<sup>th</sup> October, 2023 the applicant was absent and the respondent was represented by Mr. Francis Makota, learned advocate. The counsel for the respondent prayed the

application be argued by way of written submission as the applicant is not represented in the application by an advocate and the prayer was granted.

The applicant prayed in her submission in chief that, her affidavit and reply to the counter affidavit of the respondent be adopted in the matter as part and parcel of her submission. She stated in her submission in chief that, although it is a discretion of the court to grant or refuse extension of time but the stated powers should be exercised judiciously upon evaluation of the evidence tendered in the court. She stated she has fronted two main reasons for the court to grant the prayed extension of time for the applicant to lodge in the court the notice of appeal to the Court of Appeal out of time.

She stated the first reason is based on sickness. She stated she was diagnosed with uncontrolled hypertension, dyslipidemia, and lumbar disc radiculopathy and is currently on calcitriol tabs to the extent that she failed to walk and she has been attending medical treatment until today. She supported her argument with the medical report annexed in her affidavit as annexure AM-2. She argued it is because of the above stated sickness that she failed to make follow up of the documents required for lodging her notice of appeal to the Court of Appeal.

She submitted that, sickness has been accepted in number of cases decided by the court as a good reason for granting extension of time as it is a reason which is out of human control. She supported her submission with the cases of **Mwana Mohamed V. Ilala Municipal Council**, Misc. Land Application No. 12 of 2020, HC Land Division at DSM and **Alasai Josiah** (Suing by his Attorney **Oscar Sawuka**) **V. Lotus Valley Ltd**, Civil Application No. 498 of 2019, CAT at DSM (Both unreported) where the court granted extension of time after being found the parties or their advocate failed to comply with certain orders because of being indisposed.

She stated the second reason for seeking extension of time is financial constraint she was suffering due to the fact that she spent all the money she had on her medical treatment. She argued the stated financial constraint caused her to fail to get an advocate who could have helped her to pursue the appeal she intends to file in the Court of Appeal. She submitted that, although financial constraint cannot be ground of granting extension of time but it depends with the circumstances on which that person has been experiencing.

She supported her submission with the case of **Costantine Victor John V. Muhimbili National Hospital**, Civil Application No. 214/18 of 2020, CAT at DSM, (unreported) where it was stated in some exceptional

circumstances financial constraint can be sufficient ground for granting extension of time. She went on arguing that, as she is an old woman, sick widow and she has no any other house apart from the suit property the court can use its wisdom to grant the extension of time is seeking from the court. She cited in her submission the case of **Hussein Juma V. Farouk Mohamed**, Misc. Civil Application No. 26 of 2020, HC at Dodoma (unreported) where it was stated that, the applicant's statement in his affidavit that he depends solely on the house in dispute for living with his family call for leniency of the court to grant the application.

She submitted the above stated reasons shows she has adduced sufficient reasons for being granted extension of time is seeking from the court. She also cited in her submission the case of **Lyamuya Construction Company Ltd V. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2002, CAT at Arusha (unreported) where some factors required to be considered in determination of an application for extension of time were enumerated. She based on the above stated reasons and authority to urge the court to grant the order of extension of time is seeking from the court.

The counsel for the respondent stated in his reply that, the application is devoid of merit and deserve to be dismissed with costs. He

stated the main issue to be determined in this application is whether the applicant has adduced sufficient grounds to warrant the grant of extension of time she is praying from the court. He gave the historical background of the matter and stated that, after determination of Land Case No. 99 of 2010 which its decision was delivered on 31<sup>st</sup> August, 2016 in favor of the respondent, the applicant did not do anything to initiate the appeal. He stated the applicant did neither lodge notice of appeal in the court nor written a letter of requesting for the copy of the proceedings of the case.

He stated that, after the respondent instituted an application for execution of the decree of the court in the court on 19<sup>th</sup> July, 2023 the applicant was awoken and come to the court in an attempt to waste the precious time of the court by seeking for extension of time to initiate the appeal process. He stated the applicant has failed to adduce sufficient reason for being granted extension of time is seeking from the court. He argued that, although the applicant stated sickness is the reason caused her to delay to file the notice of appeal in the court within the time prescribed by the law but the report from the hospital annexed in her affidavit shows the applicant contracted the decease in the year 2020.

She submitted that, although the applicant can be condoned from the year 2020 when she contracted the sickness but she has not

accounted for the period from 31<sup>st</sup> August, 2016 when the judgment was delivered to the year 2020 when she contracted the sickness. He stated the case of **Lyamuya Construction Company Limited** (supra) cited in the submission of the applicant shows the applicant was required to account for all the period of the delay. He cited in his submission the case of **Hyasintha Malisa V. John Malisa**, Civil Application No. 167/01 of 2021, CAT at DSM where the court quoted the case of **Bushiri Hassan V. Latifa Lukio Mashayo** and stated delay of even a single day has to be accounted for.

He stated the applicant has failed to account for the period of good four years of the delay from 31<sup>st</sup> August, 2016 to the year 2020 when she started to attend the medical treatment. He stated with exception of the case of **Lyamuya Construction Company Ltd** (supra) the other cases cited in the submission of the applicant are distinguishable to the present application. He submitted that the applicant has failed to show good cause to warrant the application of the cited cases in the application at hand.

He argued in relation to the second reason of financial constrains of the applicant caused by the sickness she contracted that, in our country we have several institutions which offers legal aid free of charge to persons with financial problems. He stated the applicant has not stated to

the court any effort made to approach the stated legal aids institutions which includes Tanganyika Law Society, TAWLA and the like. He stated the applicant failed to write even a letter to the Registrar of the High Court to request for the copies of necessary documents for appeal purposes to show her interest of pursuing the stated appeal. He submitted that, none of the principles laid in the case of **Lyamuya Construction Company Ltd** (supra) is supporting the application at hand. At the end he prayed the application be dismissed with costs for being devoid of merit.

Having carefully considered what is prayed in the chamber summons, facts deposed in the affidavit, counter affidavit and the arguments made in the rival submissions filed in the court by both sides, the court has found it is proper to start by looking into what is provided under section 11 (1) of the Appellate Jurisdiction Act upon which the application is made. For the purposes of this application, the cited provision of the law states inter alia that, the High Court may extend the time for giving notice of intension to appeal from the judgment of the High Court, notwithstanding that, the time for giving notice has already expired.

The wording of the above referred provision of the law and as rightly argued in the submission of the applicant shows the court is vested with

discretionary power of granting or refusing to grant extension of time for doing what is stated in the cited provision of the law. The court has arrived to the foregoing finding after seeing the word used in the cited provision of the law is the word "may". The court has found it is provided under section 53 (1) of the Interpretation of the Laws Act, Cap 1 R.E 2019 that, where the word "may" is used in any written law to confer powers to be exercised by court, it is required to be construed the court has discretion to exercise the powers so conferred or not.

However, the position of the law as stated in number of cases decided by this court and the Court of Appeal is that, the discretionary power vested to the court by the quoted provision of the law is required to be exercised judiciously. One of the cases where the stated position of the law was emphasized is in the case of **Ngao Godwin Losero V. Julius Mwarabu**, civil application no. 10 of 2015. CAT at Arusha (unreported), where the Court of Appeal of Tanzania stated that: -

*"Is the matter of general principle that whether to grant or refuse an application ... is entirely on the discretion of the court, **but that discretion is judicial and so it must be exercised according to the rules of reason and justice**".*  
[Emphasize added].



The question to ask here is which rules of reason and justice are required to be used to guide the court in deciding to grant or refuse to grant extension of time sought. The court has found the answer to the above question can be found in the case of **Elias Msonde V. R**, Criminal Appeal No. 93 of 2005 where Mandia, JA (as he then was) stated that:

*"We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected of the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part".*

The term "sufficient or reasonable or good cause" used in the above quoted decision which a party seeking for extension of time is required to show to the court are not defined in any provision of the law. However, some of the factors which our courts are required to consider when determining whether "reasonable or sufficient or good cause" has been shown by a party seeking for extension of time have been deliberated by our courts in different cases. Some of those cases include the cases of **Tanga Cement Company Limited V. Jumanne D. Massangwa & another**, Civil Application No. 6 of 2001, CAT (unreported) and **Lyamuya Construction Company Limited** (supra). The Court of Appeal of Tanzania listed in the latter case some factors or principles to be

considered in granting or refusing to grant extension of time to be as follows: -

- (a) The applicant must account for all the period of delay.*
- (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 and*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."*

While being guided by the position of the law stated in the above quoted authorities the court has found the applicant's application is based on two reasons. The first reason as deposed at paragraph 3 of the affidavit of the applicant and stated in her submission is sickness. The applicant stated after the impugned judgment be delivered, she was aggrieved by the decision of the court and while waiting for the copies of the judgment and decree for processing the appeal she contracted a decease which caused her to go for medical treatment. The second reason stated in the same paragraph of the affidavit of the applicant and argued in her submission is that, the medical bills caused financial constraint to her and failed to engage a lawyer of assisting her in preparing the appeal.

Starting with the first reason of sickness the court has found as rightly argued in the submissions filed in this court by both sides, sickness when established has been taken as a sufficient or good cause for granting extension of time. The stated position of the law can be seen in the cases of **Mwana Mohamed** (supra) and **Alasai Josiah** (supra) cited in the submission of the applicant where the court accepted sickness as a sufficient and good cause for granting extension of time. However, the court has found it was stated in the case of **Shembilu Shefaya V. Omary Ally**, [1992] TLR 245 that, in order for sickness to be accepted as a sufficient or good cause for granting extension of time there must be evidence to show the applicant was sick and incapable of taking the step, she was required to take throughout the period of sickness.

The court has found as rightly argued by the counsel for the respondent and without being disputed by the applicant the medical report attached to the affidavit of the applicant states clearly that, the applicant started to attend routine clinic at Rabininsia Memorial Hospital from 2020 when she was diagnosed with uncontrolled hypertension, dyslipidemia, and lumber disco radiculopathy and is currently on calcitriol tablets which caused her to fail to walk and she has been attending medical treatment at the same hospital until today. The court has found

that, although there is such a proof of sickness of the applicant but the same covers only the period from the year 2020 to the date of filing the instant application in the court.

As rightly argued by the counsel for the respondent there is no any explanation given to show what prevented the applicant to process the intended appeal from 31<sup>st</sup> August, 2016 when the impugned judgment was delivered until the year 2020 when she was diagnosed with the stated illness. The position of the law as stated in the case of **Lyamuya Construction Company Limited** (supra) requires the applicant to account for all period of the delay. The requirement to account for all period of the delay has been emphasized in various cases which one of them is the case of **Bushiri Hassan** (supra) where it was 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 has to be taken."*

Therefore, as rightly argued by the counsel for the respondent, the applicant has not accounted for the period of four years of the delay from 31<sup>st</sup> August, 2016 when the impugned judgment was delivered until 2020 when she was diagnosed with the sickness stated is the cause of her failure to process the appeal she intends to process out of time.

Coming to the second reason of financial constraint the applicant alleged she was suffering and caused her to fail to engage a lawyer of assisting her to prepare the intended appeal, the court has found as rightly argued by the applicant and as stated in the case of **Constantine Victor John** (supra), except on some exceptional circumstances financial constraint is not a good cause for granting extension of time. The question is whether there are exceptional circumstances in the instant application favoring the applicant to be granted extension of time is seeking from the court.

The court has found that, although the applicant stated in her submission that she is an old woman, sick, widow and she have no any other house apart from the suit property but as deposed at paragraph 3 of the affidavit of the applicant the financial constraint the applicant was facing was caused by high medical bills. That means the applicant started to face financial constraint after being diagnosed with the decease she has alleged she is suffering from and not before. In other word from when the impugned judgment was delivered in 2016 until the year 2020 when she started to attend routine clinic, the applicant had no the alleged financial constraint.

Even if it will be taken the applicant was in a financial constraint even before becoming sick because of being old woman, and a widow but she has not stated what effort she made to pursue for the intended appeal from when the impugned judgment was delivered until when she became sick and failed to process the appeal because of the financial constraint caused by the sickness she contracted. The court has found as rightly argued by the counsel for the respondent the applicant has not stated to the court if she has ever written a letter to the court to request for copies of the judgement and decree for the purposes of preparing the intended appeal or sought for legal aid from any institution which provides free legal aid in our country and failed to get the stated free legal aid.

The above finding caused the court to come to the settled view that, the position of the law stated in the cases of **Mwana Mohamed, Alasai Josiah** and **Constantine Victor John** cited in the submission of the applicant cannot be invoked in the present application to grant the applicant extension of time is seeking from this court. The court has also come to the stated finding after seeing the delay considered in the referred cases were not inordinate like the delay of the applicant who has not account for a period of four years from 31<sup>st</sup> August, 2016 to the year 2020. The court has found the principle that the delay should not be

inordinate and the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action he intends to take laid in the case of **Lyamuya Construction Company Ltd** (supra) have not been fulfilled by the applicant in the present application.

The court has also found the applicant deposed at paragraph 5 of the affidavit supporting the application that there are several illegalities in the impugned decision which need intervention of the Court of Appeal. The applicant deposed in the stated paragraphs of the affidavit that the trial judge erred in law and fact to entertain matter which was supposed to be entertained by the probate court and the court erred in law and fact in ordering the applicant to vacate from the suit property without considering the applicant is among the heirs of the deceased and the suit property was acquired by joint effort of the deceased and the applicant.

The court has found as stated in number of cases including the case of **Lyamuya Construction Company Ltd** (supra) illegality of the decision sought to be challenged is one of the sufficient and important cause of granting extension of time. However, the court has found that, although the applicant deposed the alleged illegalities in her affidavit but she didn't state anything in her submission to support the same. It is the

view of this court that, failure to state anything in supporting the stated illegalities is like leaving the same unsubstantiated.

The court has also found that, the decision the applicant intends to challenge shows the matter before the court was a claim of ownership of the landed property between the applicant and the deceased who was represented in the matter by his legal representative which the court had jurisdiction to entertain the same. It was not a probate matter which was supposed to be entertained by a probate court.

After taking into consideration the submission by the counsel for the respondent that the applicant came to the court after seeing the respondent has filed in the court an application for execution of the decree passed by the court, the court has failed to see anything which can make it to find there is justifiable reason to grant the applicant extension of time to file in the court a notice of appeal to the Court of Appeal after the elapse of about seven years from when the impugned decision was delivered.

In the premises the court has based on the above stated reasons to find the applicant has not managed to satisfy it that she was prevented by sufficient or reasonable or good cause to process the appeal she wants to institute in the Court of Appeal out of time. Consequently, the application



of the applicant is hereby dismissed in its entirety for being devoid of merit. As the matter is involving members of the same family the court has found it is proper to make no order as to costs in the present application. It is so ordered.

Dated at Dar es Salaam this 5<sup>th</sup> day of February, 2024.



**Court:**

  
I. Arufani  
**Judge**  
05/02/2024

Ruling delivered today 05<sup>th</sup> day of February, 2024 in absence of the applicant who is reported sick and in the presence of Mr. Egbert Millanzi, learned advocate for the respondent. Right of appeal to the court of appeal is fully explained.



  
I. Arufani  
**Judge**  
05/02/2024