

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

MISC. LAND CASE APPLICATION NO 648 OF 2019

(Originating from the High court of Tanzania Land Division in Misc. Land Appeal No.137 of 2017)

RASHID SALUM MTIMBWA.....APPLICANT

VERSUS

ABDALLAH MWALIMU..... RESPONDENT

Date of Last Order: 05.08.2020
Date of Ruling 14.09.2020

RULING

V.L. MAKANI, J

The applicant RASHID SALUM MTIMBWA is seeking for orders of extension of time within which to file an application for certifying that there is point of law involved in the intended appeal from the judgment of the high court in Miscellaneous Land Case Appeal No.137 of 2017.

The application is made under 14 of the Law of Limitation Act, Cap 89 RE 2002(the **Limitation Act**) and section 95 of the Civil Procedure Code CAP 33 RE 2002. The application is supported by the affidavit of the applicant.

The application was argued by the way of written submissions; the submissions for the applicant were drawn and filed by Mr. Taher

Hussein Muccadam, Advocate while those by the respondent were drawn and filed by by Mr. Benson Pascal Ngowi, Advocate.

Mr. Muccadam prayed to adopt the contents of the applicant's affidavit and said that immediately after the delivery of the judgment on 23/09/2019 in Misc. Land Case No.137 of 2017, the applicant fell ill and was admitted at Kariakoo Dispensary. He then recovered and filed the Notice of Appeal on 27/09/2019, thereafter his condition became worse and he was again admitted in the hospital until 08/11/2019. He added that the applicant consulted his advocate and on 12/11/2019 he filed this application for extension of time. He said illness is one among the sufficient cause to extend time. He supported his position with the case of **Jehangir Aziz Abdulrasul vs. Balazi Ibrahim Abubakar Bibi Sophia Ibrahim, Civil Application No.79 Of 2016 (CAT-DSM)** (unreported).

In response, Mr. Ngowi also prayed to adopt the contents of his counter-affidavit and said that the main reasons advanced by the applicant for the delay in filing the application for leave to appeal to the Court of Appeal was sickness of the applicant. He said that **Annexure A** attached to the affidavit of the applicant, shows that he attended Kariakoo Dispensary on 23/09/2019 but the same does not show that he was admitted. He further said that **Annexure A** does not provide further particulars as to the nature of sickness and progress of the applicant from 24/11/2019 to 12/11/2019 when this application was filed. He cited the case of **Shembilu Shefanya vs. Mary Ally (1992) TLR 245** where the court rejected the application

for extension of time because the applicant had not provided thorough explanation regarding his sickness. He went on saying that the applicant has not shown any diligence in pursuing his intended application as he filed a notice of appeal on 27/11/2019 but could not file the alleged application thereafter but came up with reasons of sickness.

Mr. Ngowi further said that on 15/10/2019 the applicant received the respondent's notice of address for service, wherein by that time the applicant was within time to file the application for leave. He said all this could have been done through the applicant's lawyer representing the applicant as he had instructions to appeal. He was of the view that there was lack of diligence on the part of the applicant and negligence on the part of applicant's advocate. He insisted that the applicant should have accounted for every single day of delay as was enunciated in the cases of **Elifazi Nyatega & Others vs Caspian Mining Limited, Civil Application No. 44/08 of 2017 (CAT-Mwanza)** (unreported) and **Wambele Mtumwa Shahame vs. Mohamed Hamis, Civil Reference No. 8 of 2016 (CAT-DSM)**(unreported). He said the applicant has even failed to tell when he recovered from sickness.

Mr. Ngowi further said that the applicant has submitted what was not contained in the affidavit. The fact that he was admitted in Kariakoo Dispensary on 23/11/2019 and that he lodged a Notice of Appeal on 27/11/2019 was not contained in the affidavit. He said facts not stated in the supporting affidavit should not be considered in this application

as stated in the case of **Elifazi Nyatega & Others** (supra). He distinguished the case of **Jehangir Aziz Abdul Rasul** (supra) to the facts of this case in that in the former case the medical reports were satisfactory unlike in this application. He prayed for this application to be dismissed with costs.

I have gone through the affidavit, counter-affidavit and the submissions by the learned Advocates. It is settled principle of the law that an application for extension of time is entirely the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported). And in **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010(CAT-Arusha)** (unreported) the Court of Appeal stressed that the applicant must account for all the period of delay. The Court said:

"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 reasons adduced by the applicant for his failure to file an application for certification of points of law in an intended appeal are contained in paragraph 4 of his affidavit. That from 23/09/2019 when the judgment was delivered to 08/11/2019 the applicant was sick. The medical report **Annexure A** from Kariakoo Dispensary shows

that the applicant attended treatment at the Dispensary on 23/09/2019 the same day the judgment was delivered. The medical report has no details as to whether or not the applicant was admitted as alleged. It does not even show when he was discharged if at all. Mr. Muccadam submitted that the applicant was re-admitted in the hospital until 08/11/2019, but there is no supporting evidence that the applicant was actually discharged and re-admitted. In summary, **Annexure A** is silent on whether the applicant was admitted in Kariakoo Dispensary, and that he was discharged and re-admitted. The said **Annexure A** only shows medicine prescribed to the applicant. As correctly stated by Mr. Ngowi, there is no thorough explanations as to the sickness of the applicant. In that respect this court shall not rely on **Annexure A** to the affidavit of the applicant.

Based on the above finding, it is without dispute that it is more than 45 days from the date of judgment on 23/09/2019 to 12/11/2019 when this application was filed. These days of delay have not been accounted for as propounded in the case of **Lyamuya Construction Company Limited** (supra). It is therefore an obvious fact that the applicant and his advocate, who has been representing him all along acted negligently after the delivery of the judgment in Misc. Land Case Appeal No.137 of 2017.

Having so observed, I find no sufficient reasons to warrant this court to invoke its discretionary powers in granting extension of time to file an application for certifying that there is a point of law involved in the intended appeal against the judgment in Land Case Appeal No. 137

of 2017. Subsequently, I proceed to dismiss the application with costs.

It is so ordered.

V.L. Makani
V.L. MAKANI
JUDGE
14/09/2020

