

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

MISC.LAND APPLICATION NO. 603/2023

MOHAMED SEIF MBOWETO.....APPLICANT

VERSUS

BAKARI JUMA ALLY MKUMBUGO (An administrator

the estate of the late UMA ALLY MKUMBUGO.....1ST RESPONDENT

HABIBA NUHU KYUTA.....2ND RESPONDENT

HAMISI NGANGEMUBA.....3RD RESPONDENT

RULING

23/02/2024 & 22/04/2024

GWAE, J

Aggrieved by the decision of the District Land and Housing Tribunal of Mkuranga at Mkuranga (DLHT) dated 5th July 2023, the applicant, Mohamed Seif Mboweto was desirous to pursue his appeal to the Court but he found himself barred by the Law of Limitation. Hence, the present application for extension of time.

The application is brought under section 41 (1) and (2) of the Land Disputes Courts' Act, Cap 216, Revised Edition, 2019 and section 14 (1) of the Law of Limitation Act, Cap 89 Revised Edition, 2019 and Order XLIII

Rule 2 and section 95 of the Civil Procedure Code, Revised Edition, 2019 (CPC).

In compliance with the moving provisions of the law, the applicant has given reasons for his delay to file the intended appeal to the Court within the prescribed time through his affirmed affidavit. His reason being an accident that he faced immediately after delivery of the judgment subject of the intended appeal.

The respondent named herein had not filed their counter affidavit to oppose this application. However, they appeared on the date fixed for hearing (23rd February 2023). The applicant orally argued that he did not delay to appeal except that; he wrote a letter to the Deputy Registrar dated 17th August 2023 and in addition to that he was sick. All the respondents who appeared in person submitted that the applicant is a liar since he did not feel sick as opposed to his oral submission during hearing of the application.

In his rejoinder, the applicant stated that, he was truly sick as he was admitted at Nyamwage Hospital adding that he filed his appeal on 25/7/2023 and thereafter he came to collect a reply letter from the DR of the Court.

It is now the duty of the court to assess if the applicant has demonstrated sufficient cause for the sought grant of extension of time

within which to file an appeal to the Court. The power to grant or refuse extension of time is discretionary one yet the court has to exercise such power judiciously in doing so.

That being the case, I am therefore duty bound to carefully look at the application in question. This application was physically filed on 19th September 2023 whereas the judgment subject of the intended appeal was pronounced on 5th July 2023. Hence, delay of 31 days from when 45 days lapsed. However, the applicant is found asserting that he fell sick immediately after delivery of the DLHT's judgment. Examining the medical chit dated 14th July 2023, I am of the view that, since sickness and feeling are experiences of one who is sick and not otherwise. It follows therefore mere assertions by the respondents that, the applicant was not sick subsequent to the delivery of the judgment is uncorroborated by tangible evidence. I find it apposite to subscribe to **Emmanuel R. Maira vs The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010 (Unreported) where the Court of Appeal of Tanzania stated as follows;

"Health matters, in most cases, are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike."

Similarly, I have examined the letter of the Deputy Registrar of the Court dated 17th August 2023 and found to being indicative that, the applicant really wrote a complaint letter or what he thought to be reasons for his dissatisfaction, which was received by the Court on 25/7/2023. Scrutinising the applicant's, letter, it sounds to me that the same was deemed to be a Memorandum of Appeal. Thus, in legal sense, the applicant filed the letter purporting it to be his grounds of appeal. Hence, was within time when he presented the same before the Court.

In the circumstances, I find the merit of the application, it is granted as prayed. The applicant has to lodge his intended appeal to the Court within **fourteen (14)** days from the date of delivery of this ruling. Costs shall abide the result of the intended appeal.

It is so ordered.

DATED at **DAR ES SALAAM** this 22th April 2024



M. R. GWAE
JUDGE