IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: JUMA, C.J., MKUYE, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 346 OF 2020

KULWA LUTAMBI.....APPELLANT

VERSUS

IRENEO SAYI GORESHI.....RESPONDENT

(Appeal from the Ruling of the High Court of Tanzania at Mwanza)

(Gwae, J.)

dated 24th day of October, 2018

in

Misc. Land Application No. 290 of 2016

.....

JUDGMENT OF THE COURT

16th & 20th February, 2024

MKUYE, J.A.:

This an appeal against the decision in the Ruling of the High Court (Hon. Gwae, J.) dated 24/10/2018 in Miscellaneous Land Application No. 290 of 2016. The brief background of the matter leading to this appeal goes thus:

The appellant, Kulwa Lutambi and the respondent Ireneo Sayi Goreshi were involved in a dispute before the Ward Tribunal for Mantare Ward over ownership of a five-acre farmland located at Nyankunji

Village, Mantare Ward within Mwanza Region. Before the Ward Tribunal, the respondent had sought to redeem back a clan land that had been erroneously sold to the appellant by certain individuals. The Ward Tribunal found in favour of the respondent and ordered that in redeeming such land, the appellant should pay TZS. 3,000,000.00.

The appellant was not amused with that decision. He appealed to the District Land and Housing Tribunal (DLHT) in which, his appeal was partly allowed. The redemption amount was reduced to the amount equal to the purchase price of TZS. 700,000.00 that was paid out by the appellant for purchase of the suit land. The respondent was also ordered to pay general damages of TZS. 300,000.00.

Dissatisfied with the DLHT decision, the appellant desired to appeal against that decision to the High Court. However, he discovered that time for lodging the appeal had lapsed. He resorted to apply for extension of time to lodge his appeal out of time, which, was refused upon observation by the High Court that no sufficient cause for the delay had been given. Aggrieved by the refusal to extend time, he applied for and leave was granted to appeal to this Court, that being a requirement

by then. He has now lodged this appeal seeking to challenge the decision of the High Court refusing to extend time on two grounds of appeal as hereunder:

"1. *That, the Honourable Judge of the High Court erred in law by failing to consider the applicant's documentary evidence which shows that the applicant was sick and he attended at Klsesa dispensary and thereafter recuperating at home before filing the application for extension of time to file application for leave to appeal to the Court of Appeal.*

2. *That, the Honourable Judge erred in law by invoking technicalities instead of giving substantive justice contrary to the law of the land ie. The Constitution of the United Republic of Tanzania of 1977".*

Ahead of the hearing of the appeal, the respondent lodged a notice of preliminary objection on one point of objection concerning service of a notice of appeal on the respondent which, upon reflection he abandoned it on the day fixed for hearing of the appeal and, thus, paving a way for the hearing of the appeal to proceed.

When the appeal was called on for hearing, the appellant appeared in person without any representation, whereas the respondent enjoyed the services of Mr. Emmanuel Sayi, learned advocate.

On being given an opportunity to submit on his grounds of appeal, the appellant seemed to have nothing to elaborate and understandably so, he being a lay person. We, thus allowed the advocate for the respondent to respond to the grounds of appeal first with a view that perhaps the appellant would have something to comment later.

Responding to the appeal, Mr. Sayi prefaced his submission by declaring his stance that he was contesting the appeal. He argued that the appellant's contention that the Hon. Judge failed to consider the documentary evidence showing that he was sick is not true since he considered them extensively. The learned counsel referred us to pages 39, 40 and 41 of the record of appeal where, he said, the learned Hon. Judge considered the exhibits and analysed the dates in which the appellant attended to the hospital for treatment and observed that the appellant had been irregularly attending to the hospital. To round up his submission on this ground, the learned counsel submitted that it was

proper for the Hon. Judge to find that the appellant failed to give sufficient cause for failing to file the appeal within time.

As regards the 2nd ground of appeal in which the appellant faults the learned Hon. Judge for relying on technicalities, Mr. Sayi submitted that he was unable to see where the technicalities were used by Hon. Judge. It is unfortunate, he said, that the appellant did not elaborate it as he did not even file his written submission.

Under those circumstances, the learned counsel implored the Court to find that the appellant has failed to substantiate his appeal and dismiss it with costs.

On his part, the appellant forcefully argued that the Hon. Judge did not consider his exhibits showing that he was sick. He also assailed the High Court for blaming him why he had to be treated in a different District (Kisesa) from the District (Magu) where he resided. In addition, he argued that he was bereaved of his child although this fact did not feature in the affidavit in support of his application before the High Court. He insisted for this Court to grant the application.

Having examined the grounds of appeal and the rival submissions from both sides, we think, the issue for this Court's determination is whether the appeal has merit.

In the first ground of appeal, the appellant's complaint is that the High Court did not observe or consider that the delay was attributed to his illness and subsequent recovering at his home place. He assailed the learned High Court Judge for failure to consider the medical chits which proved that he was sick. On the other hand, Mr. Sayi is of the view that the learned High Court Judge considered such documents and came to the conclusion that the appellant did not advance sufficient cause to warrant the grant of extension of time.

Our starting point would be to restate the obvious, that is, any application for extension of time to do anything after the time of doing so had expired is in the discretion of the Court to grant or to decline from granting it. The said discretion is to be exercised judicially so long as sufficient cause or good cause is shown. Besides that, it is noteworthy that there is no hard and fast rules as to what entails sufficient cause – see **Oswald Masatu Mwizarubi v. Tanzania Processing Limited,**

Civil Application No. 13 of 2010 and **Vodacom Foundation v. Commissioner General (TRA),** Civil Application No. 107/20 of 2017 (both unreported).

Although there is no definition as to what constitutes "sufficient cause" there are a number of factors which have been expounded in numerous decided cases which need to be taken into account. Among them, they include: promptness by the applicant in bringing the application after becoming aware that time has lapsed; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant - see **Dar es Salaam City Council v. Jayantilal P. Rajani,** Civil Application No. 27 of 1987; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited,** Civil Application No. 116 of 2008; **Tanga Cement Company Limited v. Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001; and **Hamis Mohamed (as Administrator of the Estates of the late Risasi Ngawe) v. Mtumwa Moshi (as Administrator of the Estates of the late Moshi Abdallah)** Civil Application No. 407/17 of 2019 (all unreported). Also, the Court when was faced with akin scenario in the case of **Lyamuya Construction Company Limited v. Board of Trustees of**

Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported), it propounded some principles to be taken into account as hereunder:

> *"1. That the applicant must account for all the period of delay.*
> *2. The delay should not be inordinate.*
> *3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
> *4. If the court feels that there are other reasons such as the existence of a point of law of sufficient importance such as illegality of the decision sought to be challenge".*

The issue of the duty of the applicant to account for each day of delay was emphasized in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 2 of 2007, **Crispin Juma Juma Mkude v. Republic,** Criminal Appeal No. 34 of 2012, **Sebastian Ndaula v. Grace Rwamafa (Legal Representative of Joshwa Rwamafa,** Civil Application No. 4 of 2014 (all unreported).

Also, sickness has been recognized as good cause for extending the time. See for instance, **Sweetbert Ndebea v. Nestory Tigwera,** Civil Application No. 3 of 2019 and **Kapapa Kumpindi v. The Plant**

Manager, Tanzania Breweries Limited, Civil Application No. 6 of 2010 (both unreported). However, in order for this reason to amount to sufficient cause there must be reliable or necessary material or medical proof from reliable registered hospital. This is geared towards avoiding mere allegation or fake medical reports of sickness – See **Richard Mgala and 9 Others v. Alkael Minja and 4 Others,** Civil Application No. 6 of 2010 (unreported).

In this case, the decision of the DLHT whose appeal was delayed to be instituted to the High Court was delivered on 29/5/2015 under section 38 (1) of the Land Disputes Courts Act, Cap 216 R.E. 2002, an appeal from the DLHT to the High Court is required to be lodged within sixty days from the date when the decision was handed down. It follows, therefore, that by simple calculation the appellant ought to have filed his appeal by 24/7/2015 from when the decision was delivered. That was not done. However, the application for extension of time, subject of this appeal, was lodged on 7/11/2016 which was after the lapse of about eleven months from the date of the decision.

In substantiating his delay to file the appeal within time in the High Court, the appellant advanced a reason of illness. He also produced medical chits (KL. 2) showing that on diverse dates and intervals from 30/05/2015 to 11/8/2016 he had been attending to the hospital/ dispensary for treatment, which, is the area of the appellant's claim that they were not considered. The medical chits as shown from pages 25, 26, 27, 28, 29 and 30 of the record of appeal reflect that he attended at Kisesa Dispensary on diverse dates, that is, on 30/5/2015, 30/6/2015, 2/12/2015, 20/2/2016, 20/3/2016, 21/4/2016, 5/6/2016 and 11/8/2016. The said documents were discussed by the High Court Judge as reflected at pages 40 to 41 of the record of appeal then at page 41 of the record, the learned Judge observed that:

> *"In view of the above dates of attendance for medication,* ***I am not persuaded for the length of delay from 30/6/2015 to 2/12/2015 amounting to almost six months without being medically attended or admitted at hospital,*** *I think the period in between June 2015 to December 2015 the applicant, if he was not relaxed or gross negligent, would file his appeal within that period*

taking into account that he was not admitted as correctly contended by the respondent".

[Emphasis added]

The learned Judge went on to find that the appellant did not account for not only the delay from 30/6/2015 to 2/12/2015 but also form 11/8/2016 to 7/11/2016 when the application under discussion was filed.

From the above revelation, we are in accord with Mr. Sayi that the learned Judge considered all the documentary evidence, particularly, the medical chits relied upon by the appellant to substantiate his sickness that prevented him to lodge his appeal within time. However, he was not convinced to have amounted to sufficient cause since the appellant had neither been admitted at any hospital throughout the alleged sickness because he was attending treatment as an outpatient nor was attending medical treatment continuously. It was also noted that the appellant did not attend the hospital from 30/6/2015 to 2/12/2015, a period of almost six months and he translated it to be a mere negligence on his part and that had he been serious enough he would have filed his appeal within that period.

We also note that during the hearing of the appeal, the appellant lamented that the learned Judge blamed him for allegedly being treated at Kisesa Dispensary which was in a different District from the District which he resided. However, in our view, this argument lack basis as it was not relied upon by the High Court in it's decision although the respondent had raised such concern in his submission at the High Court. In any case, even if the High Court said so, which is not the case, in our recollection there is no law which prohibits a person to undergo treatment at a place other than where he is used to reside.

Again, during the hearing of the appeal, the appellant tried to advance another reason for the delay that he was bereaved of his child, but in our view, this is a new ground which had never been averred in his affidavit in support of his application. Neither was it canvassed by the High Court. It is brought at this stage as an afterthought. In this regard, we find no reason to fault the High Court's finding and we dismiss this ground for lack of merit.

In the second ground of appeal, the appellant is faulting the Hon. Judge for relying on technicalities instead of adjudicating substantive

justice. It is, however, unfortunate as was submitted by Mr. Sayi that there was no elaboration on the ground, more so, as no written submission was filed.

That notwithstanding, after having anxiously considered the nature of the complaint, we were led to the current jurisprudence in administering justice as was introduced in sections 3A and 3B of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 through the Written Laws (Miscellaneous Amendments) (No. 3) Act 2018 (Act No. 8 of 2018).

Nevertheless, in dispensing substantial justice while guided by the overriding objective or oxygen principle should not be taken in disregard of the dictates of the law. In other words, as was held in some of our decided cases, the overriding objective is not to be invoked blindly to gloss over/flout the mandatory provisions of procedural law. See: **Mondorosi Village Council v. Tanzania Breweries Limited and Four Others,** Civil Appeal No. 66 of 2017 (unreported). In this regard, much as there was no elaboration to this ground, we are of the view that invocation of the overriding objective in the circumstances of this case is unfounded and, hence, this ground equally fails.

In the result, in view of our discussion above, we are satisfied that the appeal is not meritorious. We accordingly dismiss it with costs.

DATED at **MWANZA** this 19th day of February, 2024.

I. H. JUMA
CHIEF JUSTICE

R. K. MKUYE
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Judgment delivered this 20th day of February, 2024 in the presence of the appellant appeared in person and Mr. Emmanuel Sayi, learned counsel for the respondent, is hereby certified as a true copy of the original.

G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL