

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS LAND CASE APPLICATION NO. 52 OF 2020

HABIBU M. LEMA APPLICANT

VERSUS

HAMISI J. KIMARO RESPONDENT

16/4/2021 & 22/4/2021

RULING

MKAPA, J:

Habibu Lema the appellant, has brought this application under section 11(1) of the **Appellate Jurisdiction Act (AJA)** Cap 141 [R.E 2019] seeking for extension of time to file out of time leave to appeal to the Court of Appeal against the decision of this Court (**Mutungi J.**) in **Land Appeal No. 6 of 2020** delivered on 30/06/2020. The Application is supported by applicant's sworn affidavit. The respondent opposed the application and filed counter affidavit.

At the hearing the application was agreed to be disposed of by filing written submissions. The Applicant appeared in person unrepresented while the Respondent was represented by Mr. Gideon Mushi learned advocate.

Submitting in support of application the applicant submitted that after the Judgment of this Court was delivered on 30/6/2020 he fell sick on

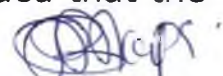


5/07/2020 and was admitted at Mawenzi Hospital for one month. Thus, due to this an unforeseen circumstance was unable to apply for leave to appeal within the prescribed by the law. To support his argument he submitted a medical chit from Mawenzi Referral Hospital.

He went on recalling the fact that, an application for leave of the Court to extend time to file for leave to appeal out of time must account sufficient reasons for the delay and further that, the applicant must account for each day of delay. To support his contention he cited the decisions in the cases of **Godwin Nderesi** and **Karoli Ishengoma V. Tanzania Audit Corporation [1995]** TLR, 200, **Joseph Paul Kyauka and Catherine Kyauka Njau V. Emmanuel Paul Kyauka Nyau and Another, Civil Application No. 7 of 2016 CAT Arusha** where the Court emphasized that;

"...in order to justify extending time during which some steps in proceedings to be taken there must be some material which the Court can exercise its discretion".

The applicant further referred this court to the principles to be applied by the Court while considering an application for extension of time as enunciated in the case of **Lyamuya Construction Company Co. Limited V. Board of Trustees of the Young Women Christian Association, Civil Application No. 2 of 2010** and argued that the delay was not occasioned by negligence.

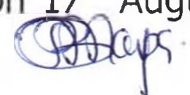


He finally prayed for the court to allow the application as the object of the Court is to decide the right of the parties and not to punish them for the mistakes they made in the conduct of their rights. He cited the case of **Cropper V. Smith [1988] 26 CHD 700 [CA]** to support his contention.

Opposing the application Mr. Mushi submitted that in order for this Court to exercise its discretionary powers in extending time there has to be sufficient cause for the delay. To support his argument he cited numerous decisions in the cases of **Godwin Ndewesi and Karoli Ishengoma V. Tanzania Audit Corporation (1995) TLR 200, Ratman V. Cumarasamy and another [1964]3 All ER 933 and Mbogo V. Shah (1968) E.A**

Mr. Mushi went on elaborating that the Judgment in **Land Appeal No. 6/2020** was delivered on 30/06/2020. The applicant was required to file the application for leave to appeal to the Court of Appeal 30 days from the date of Judgment thus he was to file the application on or before 30th July 2020. The applicant alleged the reason for delay was due to sickness and he was treated at Mawenzi hospital on the 5th of July 2020. The applicant also attached a report from the hospital.

The applicant for the respondent averred that, although sickness was an unforeseen event still he could have applied for the extension of time before 5th of July 2020 as the Judgment was delivered on the 30th June 2020. Instead, the applicant filed the application on 17th August

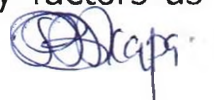


2020 after 13 days had lapsed. It was the respondent's argument that, as per the Mawenzi Regional Hospital Referral Notes, the applicant was treated as an outpatient (OPD) on the 5th July 2020 but failed to account for the delay before the 5th July 2020 and the 13 days after the lapse of time limit. It was Mr. Mushi's argument that, the applicant failed to advance sufficient cause for the delay more so, failed to account for each day of the delay. He cited the case of **Lyamuya** (*supra*) to cement his argument. He finally submitted that since the applicant failed to advance sufficient cause for the delay the application has no legs to stand. He prayed for this court to dismiss the application with costs.

In rejoinder the applicant reiterated his stance in what he had submitted earlier and maintained the fact that his sickness was a good cause for the delay and prayed for the court to consider the 13 days delays in its totality to the effect that he had fallen sick and was under treatment. He prayed for the application to be granted for interest of justice.

Having considered both parties arguments for and against the application the question for consideration is whether the applicant has shown sufficient cause to warrant this court to exercise its discretionary powers to extend time.

The general rule is to the effect that, an application for extension of time places a duty on the applicant to satisfy on the key factors as

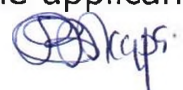
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pronounced in the landmark case of **Lyamuya** (*supra*) which provided following guidelines;

- (i) The applicant must account for all period of delay
- (ii) The delay should not be inordinate,
- (iii) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and
- (iv) 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.

Guided by the above principles it not disputed as argued by both parties, that for an application for extension of time to be considered by the Court, applicant has to show good cause and further that, not only there has to be sufficient reasons for the delay but the reasons have to be sufficient enough to extend time. [see;] **R. Yona Kaponda & 9 others [1985] T.L.R. 84**

The main reason for the delay as averred by the applicant was due to sickness. That on the 5th of July 2020 was treated at Mawenzi Hospital and admitted for 30 days. A perusal of the hospital chit has revealed the fact that, the applicant was treated at Mawenzi hospital on 5th July 2020 as an OPD patient and was prescribed bed rest for one month. The 30 days ended on 5th August 2020 yet the applicant filed the application on 17th August 2020, 13 days later. Much as the applicant



acknowledged in his submission the requirement for accounting each day of delay, yet was unable to account for the 13 days delay. In order to avoid abuse of Court procedure in **Salome Mussa Lyamba V. K. K. (T) Ltd Labour Division, 2012 LCCD 198** , the court had this to say;

"..... no valid reason in granting this application as it would amount to an abuse of the court procedures, that limitation is there to ensure that a party does not come to court as and when he chooses"

For the reasons discussed, I am satisfied that no sufficient reasons have been established by the applicant for the delay. Consequently, the application is dismissed without costs.




S.B. MKAPA
JUDGE
22/04/2021