

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISC. LAND APPLICATION NO. 60 OF 2020

WILLIUM ODEMBA ATER APPLICANT

VERSUS

MAGRETH JONAH RESPONDENT

(Application for extension of time within which to lodge an appeal from the Judgment of the District Land and Housing Tribunal for Tarime in in Misc. Land Application No. 49 of 2019 and Appeal No. 45 of 2015)

RULING

5th May and 7th June, 2021

KISANYA, J.:

This is an application for extension of time within which to file an appeal. It arises from the decisions of the District Land Housing Tribunal for Tarime in Misc. Land Application No. 49 of 2019 and Appeal No. 45 of 2015. The application is made by way of chamber summons predicated under section 38 (1) of the Land Courts Disputes Act [Cap. 216, R.E. 2019] (the LDCA) and section 95 of the Civil Procedure Code [Cap. 33, R.E. 2002]. It is supported by an affidavit sworn by the applicant, Willium Odemba Ater, on **13th December, 2019.**

In terms of the supporting affidavit, Willium Odemba Ater had appealed to this Court in time. Annexure WOA1 to the supporting affidavit

shows that his appeal was struck out on **10th April, 2017** due to errors in the judgment. This Court (Mwanza District Registry via Misc. Land Appeal No. 157 of 2016) went on to order as follows:

"The file is to be remitted to the trial court with direction that the errors in the judgment and decree be ratified as soon as possible.

It is so ordered.

*Sgd. I. Maige
Judge
10/04/2017"*

The applicant deposed further that the judgment was ratified in **November, 2018** and that he failed to appeal within time due to sickness caused by a motor vehicle accident. In the circumstances, the applicant was compelled to lodge this application. The respondent, Magreth Jonah contested via her affidavit in reply.

At the hearing of this application, the appellant appeared in person. On her part, the respondent had the services of Mr. Edson Philipo, learned advocate.

When invited to argue his application, the applicant merely adopted the affidavit. He stated further the reason for delay was sickness caused by motor vehicle accident in 2017. Upon being probed by the Court, the applicant contended that he was discharged in 2019. He was of the view

that the delay was caused by the reasons beyond his control and moved the Court to grant the application.

Mr. Philipo contested the application. He argued that the applicant had not accounted for each day of the delay. The learned counsel argued further that evidence to prove the ground of sickness and accident advanced by the applicant was wanting. Mr. Philipo went on to submit that, even if the applicant was sick and discharged 2019, he had not accounted for the delay from **2019** to **8th September, 2020** when the instant application was lodged in this Court. Therefore, the learned counsel urged the Court to dismiss the application for want of good cause.

In his rejoinder, the applicant contended that, he made follow-up of the judgment issued by the High Court of Tanzania upon being discharged from the hospital. He stated that he was attending to his sick wife.

I have considered the chamber summons, supporting affidavit, affidavit in reply and submissions by the parties. Pursuant to section 38(1) of the LDCA, the applicant was required to lodge his appeal within sixty days after the date of impugned judgment or order. This Court may extend the time for filing an appeal. This granting or refusal to extend time, is entirely in the judicial discretion of the Court. In so doing, the Court is required to consider whether the applicant has demonstrated "good and reasonable

cause" for the delay. See also, **Caritas Kigoma vs KG Dewsi Ltd** [2003] TLR 420.

The factors to be considered in determining whether the applicant has proved good and reasonable cause include, the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant and whether there is an illegality in the impugned decision. The above factors were also stated in **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). The law is also settled that each day of delay has to be accounted for by the applicant.

As earlier on stated, the applicant seeks for extension of time to appeal. The prayers in chamber summons do not specify the decision(s) subject to extension of time. It is gathered from other parts of the chamber summons and affidavit that the decisions subject to this application were made by the DLHT for Tarime at Tarime in Misc. Application No. 49 of 2019 and Appeal No. 45 of 2015.

However, the supporting affidavit does not state anything about Misc. Application No. 49 of 2019. The decision arising from that was not appended to the affidavit. As such, it is not known whether the decision in Misc.

Application No. 49 of 2019 is appealable, when was it made and the reasons for delay.

As regards Land Appeal No. 45 of 2015, it is common ground the applicant's appeal against the decision of the DLHT in that case was struck out on **10th April, 2017**. It is also not disputed that the DLHT ordered to rectify the judgment and decree. The applicant did not demonstrate the measure taken by him after the said order of this Court. It is not known as to whether and when he made follow-up of the ratified judgment and decree. Although he deposed that the judgment was rectified in **November 2018**, its copy was not appended to the affidavit or tendered during hearing.

Even if it is considered that the judgment was rectified in **November, 2018**, the applicant has not accounted for the delay after receiving the rectified judgment and decree. As rightly argued by Mr. Philipo, the ground of sickness averred in paragraphs 6 and 7 of the affidavit was not proved. Although the ground sickness is a good and sufficient cause for extension of time, it must be proved by medical evidence. The applicant must also demonstrate how the said sickness prevented him from taking the necessary measures within time. This stance was taken in **Pastory J. Bunonga v Pius Tofiri**, Miscellaneous Land Application No. 12 of 2019 (unreported), when

my brother Rumanyika, J. held:

"Where it was on the balance of probabilities proved, sickness has been good and sufficient ground for extension of time yes. But with all fairness the fact cannot be founded on mere allegations. There always must be proof by the applicant that he fell sick and for the reason of sickness he was reasonably prevented from taking the necessary step within the prescribed time."

In the case at hand, the applicant did not prove that date of alleged motor vehicle accident. The Referral Form from Shirati KMT Council Designated Hospital dated **28th February, 2019** and appended to the supporting affidavit reads:

"Above named patient attended in our hospital on 20.10.2017 due to motor traffic accident."

Further to that, the Referral Form relied upon by the applicant does not specify the dates on which the applicant was admitted into and discharged from the hospital. The fact that the applicant was "attended" in the hospital on **20th November, 2017** does not imply that he was admitted into that hospital up to **28th February, 2019**. Also, there is no evidence showing that the applicant could not perform any duty from **20th October, 2017** to **28th February, 2019**.

Again, even if I was to consider that the applicant was sick and discharged from the hospital on **28th February, 2019**, he has not accounted for the delay from that date, to **8th September, 2020** when the present application was lodged in this Court. This is so when it is noted that his affidavit was sworn on **13th December, 2019** but presented for filing on **8th September, 2020**. The ground that he was making follow-up of the copy of judgment and attending his sick wife was stated from the bar during rejoinder submission. It was neither adduced in his affidavit nor stated during submission in chief. Therefore, such ground cannot be considered.

In the light of the above, I am of the humble opinion that the applicant has failed to demonstrate good and sufficient cause for the delay. I also find that the applicant has not account for each day of delay.

For the reasons I have stated above, I dismiss the application for want of merit. I do so with costs.

DATED at MUSOMA this 7th day of June, 2021.




E. S. Kisanya
JUDGE

COURT: Ruling to be delivered this 7th day of June, 2021 in presence of the parties.



E.S. Kisanya.
JUDGE
07/06/2021

COURT: Right of appeal explained.

E.S. Kisanya.
JUDGE
07/06/2021