

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPLICATION NO.58 OF 2021

(Arising from the Judgement of the High Court in Land Appeal No. 24 of 2020 of the High court of Tanzania at Mwanza)

CLAVERTY MALUNGUJA-----APPLICANT

VERSUS

KAHATANO BUBERWA-----RESPONDENT

RULING

Last order: 10.7.2021

Ruling date: 13.8.2021

M. MNYUKWA, J.

This application is made by way of Chamber Summons accompanied by the Affidavit of the applicant, one Claverty Malungu. The application is made under section 11(1) of the Appellate Jurisdiction Act (Cap 141 R.E 2019) and section 95 of the Civil Procedure Code (Cap 33 R.E 2019). The applicant applies for extension of time to file an application for leave to appeal to the Court of Appeal against the decision of Land Appeal No 24 of 2020 delivered on 30th day of November, 2020. The applicant's

application and affidavit are opposed by the counter affidavit sworn in by Zephania Bitwale, the advocate of the respondent.

By leave of this court, the application was argued through written submissions where parties complied with the orders of the court to file submission as scheduled. I thank the parties for complying with the orders of the court.

In his brief submission, Mr. Claverty pressed me to grant leave to file an application for leave to appeal out of time to the Court of Appeal of Tanzania against the decision of this court in respect of Land Appeal No. 24 of 2020 dated 30th November 2020 which was decided in favour of the respondent. He prays this court to adopt the applicant's chamber summons and the contents of affidavit.

He submitted that, he delayed to file leave to appeal because he was sick. He started feeling sick from 29th December 2020 and attended for medical examination at National Institute for Medical Research (henceforth NIMR) of Mwanza and he was given an appointment on 30th December 2020. He also managed to file a notice of intention to appeal on 30th December, 2020. He added that, when attending medical examination at NIMR, he was

examined to establish the reasons for his failure to walk due to severe upper and lower numbness.

He insisted that, his inability to easily walk resulted him to have failed to make follow up of his case for almost five months until May 2021 when his condition improves is when he made an application for extension of time.

He went on to state that, his failure to make application within time was not attributed by the negligence or recklessness but it was due to his sickness. He averred that, his sickness is the reasons for his delay hence accounted for and his sickness has been proved by the reliable authority. He referred this court to the case of **Emmanuel R. Maira vs The District Executive Director of Bunda District Council**, Civil Application No 66 of 2010, CAT at Dar es Salaam.

Responding to the application, Mr. Zephania Bitwale submitted that the applicant is bound to show sufficient reason as to why his application for extension of time should be granted. He stated that, although it is the discretionary power of the court to grant extension of time, that discretionary power should be supported by logical, valid, authentic and sound reasoning

explaining the delay. He went on to state that, looking at paragraph 3 of the applicant's affidavit, it shows that the applicant filed the notice of appeal on 30th December 2020 and at the same time on paragraph 4 of the same affidavit he stated that on 29th December 2020 he was overwhelmed with sickness and got attended at NIMR. He urged that If he had managed to file a notice of appeal on 30th December 2020 this shows that he was able to file leave of appeal since he managed to go to the court after being attended in the hospital on 29th December 2020.

He concluded his submission by referring to paragraph 4 and annexure C of the applicant's affidavit to show that the applicant attended hospital on unknown dates of December 2020. He contended that annexure C which is dated on 20th May 2021 indicates that the applicant was attended at NIMR sometimes on December 2020 but it does not state when exactly he was admitted and discharged from the hospital. He insisted that, the applicant delay even for a single day should be accounted for as it was held in the case of **Tanzania Fish Processors Limited vs Eusto K. Ntagalinda**, Civil Application No 41/08 of 2018, CAT at Mwanza. He insisted that the applicant failed to account each and every day

of delay hence do not qualify to be granted an extension of time to file an application for leave to appeal to the Court of Appeal and his application should be dismissed with costs.

The applicant opted not to exercise his right to file any rejoinder in this application.

I would like to thank the parties for their authorities filed in support of their arguments. While I will not make reference to them, I have seriously taken them into consideration.

I have given careful consideration to the arguments for and against the application herein advanced by the learned advocate for the applicant and the respondent respectively, the central issue for determination is *whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant.*

As it was cited in the chamber summons the applicant move this court through section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019. This is the provision of law that gives this court power to extend time if the time for making the application has already expired.

The guiding law that is the Court of Appeal Rules, 2019 under Rule 45 provides the time limit within which a person may file leave to appeal to the Court of Appeal. The Rule provides that:

"45. In civil matters

- (a) Where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by the chamber summons according to the practice of the High Court, within 14 days of the decision."*

I am mindful with the fact that the power of the court to grant extension of time is broad discretionary and should be exercised judiciously. The position of the law is settled that whenever there is application for extension of time the applicant will succeed upon showing good cause to justify why his application should be granted. It has to be noted that the good cause to warrant the extension of time depends on the circumstance of each and every case.

As it was highlighted in the case of **Jacob Shija vs. M/S Regent Food & Drinks Limited and The Mwanza City Council**, Civil

Application No 440/08 of 2017, CAT at Mwanza (unreported)
among other things the court stated that:

"What amount to good cause cannot be laid by any hard and fast rule but are dependent upon the facts obtaining in each particular case. That is each case will be decided on its own merits, of course taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether very day of delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant."

In the application at hand, I have gone through the applicant's submissions and indeed revisited the applicant's affidavit specifically on paragraph 4. Let the applicant speak for himself as gleaned from his affidavit.

"That on 29th December 2020, I was overwhelmed with sickness and got attended in the NIMR for almost six months undergoing several investigations thus I was unable to file an application for leave to appeal to the Court of Appeal of Tanzania. The copy of medical report is annexed"

I also find what is claimed by the applicant as a medical report attached to this application. Again, I have had time to calculate the time which the applicant delayed to file this application in the sense that the decision was delivered by this court on 30.11.2020 and he was to file leave to appeal to the court of appeal before or on 14.12.2020 that make a statutory time of 14 days. For the reason advanced by the applicant that he was sick and attending medical treatment at NIMR, he knocks on the doors of this court and files this application on 03.06.2021 that makes a time of the delay to be approximately 170 days.

In determination as to whether the applicant managed to move this court, the law is settled and clear that the applicant must with sufficient reasons, account for each day of delay. This means that, the applicant is required to account for each day of delay from 14.12.2020 when his statutory time ended to 03.06.2021 when he filed this application. This principle is reflected in the case of **Dar es Salaam City Council vs. Group Security CO. LTD, Civil Application No. 234 of 2015 CAT at Dar es Salaam**, where it was stated that: -

"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for every day of the delay."

In the present application the applicant delayed for almost 170 days. The applicant is expected to account for each day of delay from 14/12/2020 up to 28/12/2020 which is the period of fourteen days within which its statutory period of lodging an application for leave to appeal to the Court of Appeal was already expired. The applicant in its affidavit which is also supported by his written submissions stated that on 29/12/2020 he was overwhelmed with sickness. Since during this period of delay the record suggests that the applicant was not admitted at hospital, it means that he was not serious to the extent that he failed to file a leave for appeal to the Court of Appeal.

This is also proved by the available record which show that the applicant managed to prepare notice of appeal on 30/12/2020 and file the same on 31/12/2020. If during this period he managed to prepare and file Notice of Appeal to the Court of Appeal, why he did not do the same to the leave of Appeal to the High Court.

This signifies that the applicant opts to file the Notice of Appeal over the Leave of Appeal for the best reasons known to himself.

Again, there is another period of delay from 29/12/2020 up to 3/6/2021 when he filed this application. This is almost a period of 155 in which the applicant alleged to be overwhelmed with sickness and produced a medical report to show that he was attended at NIMR even if the same does not show the exactly date on the month of December he attended the treatment.

While I agree sickness may be a ground for extension of time, the applicant is duty bound to have accounted for each day of delay and not to generalize it.

The principle of accounting each day of delay has been also emphasized in the case of **Juma Shomari vs Kabwere Mambo**, Civil Application No. 330/17 of 2020 CAT at Dar es Salaam, where it was stated that: -

"It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application."

This position has been pronounced in various decisions of the Court of Appeal, few of which are in the cases of; **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01 of 2018 (All unreported).

Guided by the above decisions, it is my findings that the applicant did not account for each day of delay for the following reasons. First, I agree with the respondent that if the applicant had an ability to file a notice of appeal on 30/12/2020, he was also in ability to file leave for appeal since he managed to go to court after being attended at NIMR on 29/12/2020.

Second, the applicant did not account for each day of delay from 15/12/2020 when his statutory period ended to 29/12/2020 when he was overwhelmed with sickness. This is a period of 14 days in which the applicant did not account for. I have no hesitation to rule out that during this period the record does not speak if he was sick to the extent that he was unable to walk. This is because his medical report does not show if he was either admitted at hospital or excused from duty (ED).

Third, the applicant is relying on the medical report that the applicant undergo treatment from December 2020 for almost six months. But what is on records, it is the medical report which is a release report dated 20.05.2021 and from when the applicant was released from the medication and treatment, there is no an account on the period from 20.05.2020 when the medical report was prepared to the date the applicant filed this application on 03.06.2021. This is a period of 13 days in which the applicant should account for and did not do the same as the law requires.

In the final analysis, I find that the applicant has failed to account for each day of delay and show a good cause upon which this Court can exercise its discretion to grant extension of time to file leave of appeal to the Court of Appeal.

The application is thus devoid of merit and it is hereby dismissed.

No order as to costs.




M. MNYUKWA

JUDGE

13/08/2021

Ruling delivered on 13th day of August, 2021 via audio teleconference whereby all parties were remotely present.




M. MNYUKWA

JUDGE

13/08/2021