

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

AT MUSOMA

MISC. LAND APPLICATION NO. 7 OF 2021

S & C GINNING CO. LTD APPLICANT

VERSUS

LABAN NDEGE 1ST RESPONDENT

MUSOMA DISTRICT COUNCIL 2ND RESPONDENT

***(Application for extension of time to file appeal from the decision
of the District Land and Housing Tribunal for Mara at Musoma in
Application No. 212 of 2017)***

RULING

19th July and 16th August, 2021

KISANYA, J.:

S & C Ginning Co. Ltd has by way of Chamber Summons based on section 41(2) of the Land Disputes Courts Act, Cap. 216, R.E. 2019 moved the Court seeking the order for extension of time within which to appeal against the decision of the District Land and Housing Tribunal for Mara at Musoma in Application No. 212 of 2017 dated 30th November, 2020. The application was filed on 17th March, 2021 and supported by the affidavits sworn on 15th March, 2021, by Adam Robert and Isack Enock Chacha, learned advocate and principal officer for the applicant, respectively.

A brief background leading to this application is as follows. The first respondent, Labani Ndege sued the respondents for trespassing into his forty acres of land thereby depriving him of his right to use the land and loss of income from selling cotton cultivated thereon. He prayed for a specific damages to the tune of forty million shillings and general damages of five million shillings. The trial tribunal was convinced that the first respondent had proved his case. It went on to award him specific damages and general damages of five millions shillings each. Upon delaying to appeal within time specified by the law, the applicant decided to lodge the present application.

Before me, the applicant enjoyed the services of Mr. Adam Robert, learned advocate, whereas Mr. Cosmas Tuthuru, learned advocate appeared for the first respondent.

Proceeding to the merits of the application, Mr. Adam prayed to adopt the affidavits in support of the application as part of his submission. He contended that the applicant could not file the appeal, the reason being sickness on part of Isack Enock Chacha and Adam Robert.

Mr. Adam submitted that, Mr. Isack Enock Chacha had been assigned by the applicant to make follow up of the case. Referring the Court to the medical report appended to the supporting affidavit, Mr.

Adam submitted that the said Isack Enock Chacha was admitted to Bunda Hospital on 10th December, 2020 and discharged on 2nd January, 2021. He contended that after being discharged, Isack Enock Chacha was instructed to attend clinic every month.

The learned counsel argued further that, being the applicant's advocate, he had also fallen sick and was admitted to Sekou-Toure Regional Hospital in Mwanza on 11th December, 2020. Mr. Adam averred that he was discharged on 14th December, 2021 as indicated in the medical reported appended to his affidavit. He also submitted that, he was required to attend medical clinic on 19th January, 2021.

The learned counsel conceded that, the affidavit did not indicate when the clinic ended. He contended that the applicant made follow up and procured the copy of judgment on 9th March 2021 before lodging the present application on 17th March, 2021. He was of the view that sickness is a sufficient ground for extension of time and that the applicant was diligent to take the appropriate action. The learned advocate closed his submission by asking the Court to grant the application.

On the part of the first respondent, Mr. Tuthuru submitted that Isack Enock Mwarwa had fallen sick after the date of impugned judgment. He was of the view that, the said Isack Enock Marwa ought to have made

follow-up of the judgment before contracting the disease. The learned counsel further argued that, being a limited company, sickness of the said Isack Enock Marwa could not affect operation of the applicant. He fortified his argument by citing the case of **Phenix Bureau De Change Ltd vs Bank of Tanzania**, Civil Appeal No. 22 of 2003, CAT at DSM (unreported).

Mr. Tuthuru invited the Court to consider the applicant had not accorded for each day of delay as required and held in **Loshilu Karaine and 3 Others vs Abraham Melizedeck Kaaya (suing as legal personal representative of Gladness Kaaya)**, Civil Appeal No. 140/02 of 2018 (unreported). He pointed out that the affidavits of Isack Enock Marwa and Adam Robert do not show what happened after their respective discharge dates to the date of lodging the instant application. That said, he prayed that the application be dismissed with costs.

Rejoining, Mr. Adam submitted that paragraph 7 of his affidavit shows that his health condition deteriorated after the discharge. He contended that the case of **Phenix Bureau De Change Ltd** (supra) is distinguishable from the circumstances of this case where the applicant's counsel and principal officer were not aware of the date of judgment.

I have dispassionately considered the submissions advanced by both parties. The duty of this Court is to consider whether or not this application is meritorious. As indicated earlier, this application is based on section 41(2) of the LDCA, which provides:

"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

It is not disputed that the judgment of the District Land and Housing Tribunal was delivered on 30th November, 2020 and its copy ready for collection on 11th December, 2020. Since the LDCA does not provide the manner in which to lodge an appeal before this Court, the provision of Order XXXIX, Rule 1(1) of the CPC applies. Thus the applicant was, among others, required to append a copy of impugned decree and judgment to the memorandum of appeal. In that regard, the time started to run against the applicant when the copy of judgment was ready for collection. However, nothing suggesting that the applicant was not aware of the judgment date. It was deposed that the copy of judgment was requested on 9th March, 2021 after hearing that the 1st respondent was in the process of executing the decree. In my view, the time within which to

appeal lapsed on 25th January, 2021. It follows that there was a delay of 51 days later because this application was filed on 17th March, 2021.

In terms of section 41(2) of the LDCA and the settled law, the applicant is granted the extension of time within which to appeal, upon demonstrating good cause for the delay. Likewise, it is trite law that the factors to be considered in determining whether to grant the application depends on the nature and circumstances of the case. Some of the factors set by case law include, the length of the delay; whether the applicant have accounted for all the period of delay and demonstrated diligence and not laziness, negligence or sloppiness in taking the required step; whether the Court finds other sufficient reasons, such as the existence of a point of law of sufficient importance, like the illegality of the decision sought to be challenged. These factors have been emphasized by the Court of Appeal in a numerous decisions. See for instance the cases of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (all unreported). In the latter case, the Court of Appeal underscored on the requirement of accounting each day of delay by holding that:

" ... delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

Similar position was also stated in the case of **Lushiru Karaine** (supra) cited by Mr. Tuthuru.

I have thus, gone through the affidavits in supporting of the application. Upon doing so, I am satisfied that the applicant has not accounted for each day of delay. The sole reasons for delay deposed by the applicant is sickness of its principal officer and advocate. At the outset, I agree that sickness is a good cause for extension of time. It is a reason beyond human control. However, there is no evidence to prove that Isack Enock Marwa and Adam Robert were sick during the period of delay (26th January, 2021 to 17th March, 2021).

Starting with Isack Enock Marwa, he did not tender medical document to prove sickness. A letter dated 2nd March, 2021 from Bunda District Hospital appended to his affidavit is not a medical document. Even if I was to consider the same, it displays that the said Isack Enock Mwita was discharged on 2nd January, 2021 and that he was required to attend medical clinic every month. However, his supporting affidavit shows that he was required to attend medical clinic every week up to the date of filing

the suit. It goes without saying that the affidavit of Isack Enock Marwa is contradicted by the information from letter from Bunda District Hospital on the issue of medical clinic. Yet again, no evidence tendered to prove that he attended any medical clinic after being discharged on 2nd January, 2021.

With regard to the applicant's counsel (Robert Adam), his affidavit shows that he was discharged on 14/12/2020. What happened preventing him from making follow up of the case and take the appropriate action is reflected in paragraph 7 of his affidavit which is reproduced hereunder.

"That I was required to attend medical checkup daily up to 19th January, 2021 after the Discharge on 14/12/2020. My health condition has deteriorated since then up to 08/03/2021 and used to be close to medical checkup which improved my health."

I went through the discharge summary dated 14th December, 2020, appended to the applicant's counsel affidavit and noted some conflicting details on the medical clinic which the learned counsel was required to attend. One item shows that the follow up clinic was 19th January, 2021 while another item indicates that he was to attend medical clinic daily. In any case, no medical document tendered to substantiate and justify the claim that Mr. Robert Adam attended medical clinic from 14th December,

2020 and that, he was under close medical check up to 8th March 2021.

In view thereof, I find that the applicant has failed to prove that Isack Enock Marwa or Robert Adam or both were sick during the time of delay. Therefore, the application is not meritorious for failure to account for the delay of 51 days.

Eventually, the application is hereby dismissed with costs.

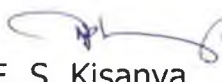
DATED at MUSOMA this 16th day of August, 2021.




E. S. Kisanya
JUDGE

COURT: Ruling delivered through this 16th August, 2021 in the presence of Mr. Robert Adam, learned advocate for the applicant and Mr. Cosmass Tuthuru, learned advocate for the 1st respondent. B/C Jovian present.




E. S. Kisanya
JUDGE
16/08/2021