

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

**AT MUSOMA**

**MISC. LAND APPEAL NO. 35 OF 2021**

**KIMUNE NYAMBARORA MASERO ..... APPELLANT**

***VERSUS***

**BABERE WAMBURA MGILI ..... RESPONDENT**

***(Appeal from the decision of the District Land and Housing Tribunal  
for Tarime at Tarime in Misc. Land Application No. 58 of 2020)***

**JUDGMENT**

24<sup>th</sup> and 24<sup>th</sup> August, 2021

**KISANYA, J.:**

This is an appeal against the ruling of the District Land and Housing Tribunal for Mara at Musoma in Misc. Application No. 58 of 2020 in which Kimune Nyambarora Masero, the applicant was denied extension of time to appeal against the decision of Regicheri Ward Tribunal in Application No. 3 of 2019.

The facts giving rise to this appeal can be briefly stated as follows: The applicant sued the respondent before the Regicheri Ward Tribunal (hereinafter referred to as “the ward tribunal”) on a claim for ownership of land. In its decision pronounced on 14<sup>th</sup> November, 2019, the ward

tribunal decided the matter in favour of the respondent. A party dissatisfied with that decision was informed of his right to appeal within forty five (45) days from 14/11/2019.

The appellant was not able to appeal within time specified by the law. It was on 11<sup>th</sup> March, 2020 when he applied for extension of time within which to appeal. The ground for the delay deposed in the supporting affidavit was sickness. Appended to the affidavit was a Medical Examination Report dated 9<sup>th</sup> November, 2019 from Isebania S.D. Hospital. The learned chairperson of the District Land and Housing Tribunal (DLHT) for Tarime was of the view that the applicant had failed to substantiate the genuine reason for extension of time. He went on to dismiss the application for want of merit.

The appellant was aggrieved by that decision. He instituted the present appeal constituting the following ground:

1. *That, the Honourable Chairman of the Tribunal grossly erred in law and facts when he hold (sic) that the Appellant who was the Applicant in the District Land and Housing Tribunal had not demonstrated sufficient causes for him to be granted extension of time within which to file his appeal out of time.*

During the hearing of this matter both parties appeared through teleconference. The appellant enjoyed the legal services of Mr. Leonard Magwayega, learned advocate while the respondent appeared in person.

In his submission, Mr. Magwayega faulted the DLHT for failing to consider that the appellant had advanced a good cause for the delay. The learned counsel contended that the delay was caused by sickness and was proved by the medical document appended to the application. He therefore implored the Court to allow the appeal and extend time.

The respondent resisted the appellant. He submitted that the appellant did not advance a good cause for the delay on the account that the document appended to the affidavit did not prove that the appellant was sick.

In his rejoinder, Mr. Magwayega urged the Court to consider the interest of justice and grant the extension of time.

I have carefully considered the record and the arguments for and against the appeal. Before dwelling into determination of the appeal in deep, I find it appropriate, to state first, the law governing the application subject to this appeal. In terms of section 20(2) of the Land Disputes Courts Act, Cap. 216, R.E. 2019 (the LDCA), the DLHT has a discretionary

power of extending the time to file appeal before or after expiration of forty five days from the date of the impugned decision of the ward tribunal. This being a discretionary power, it must be exercised judiciously. The main consideration being whether the applicant has assigned "good and sufficient cause" for extension of time. The case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) refers. In that case, the Court of Appeal underscored the factors to be considered in determining whether there is sufficient cause for extension of time. The Court of Appeal held:

*"It is in the discretion of the Court to grant extension of time, but that discretion is judicial, and so it must be exercise according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated;*

- a) The Applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The Applicant must show diligence, and not a path, negligence or sloppiness in the prosecution of the action that he intends to take.*

*d) If the Court feels that there are another sufficient reasons..."*

Since extension of time is in the court or tribunal mandated by the law to grant the same, I am guided by the principles upon which an appellate court can interfere with the exercise of discretion of an inferior court or tribunal. In **Credo Siwale vs R**, Criminal Appeal No. 417 of 2013 in which the Court of Appeal cited with approval the case of **Mbogo and Another vs Shah** (1968) EA 93 where the said principles were stated as follows:-

*"(i) if the inferior Court misdirected itself; or*

*(ii) it has acted on matters it should not have not have acted; or*

*(iii) it has failed to take into consideration matters which it should have taken into consideration,*

*And in so doing, arrived at wrong conclusion. Other jurisdictions have put it as "abuse of discretion" and that an abuse of discretion occurs when the decision in question was not based on fact, logic, and reason, but was arbitrary, unreasonable or unconscionable"*

The foregoing being the trite law, the issue for consideration in this appeal is whether the appellant demonstrated good and sufficient cause for the delay which warrant this court to interfere with the decision of the

DLHT.

I have keenly read the affidavit in support of the application lodged before the DLHT. It is common ground that the impugned judgment of the ward tribunal was delivered on 14<sup>th</sup> November, 2019. Therefore, in terms of section 20(1) and (2) of the LDCA, the time to appeal lapsed 29<sup>th</sup> December, 2019.

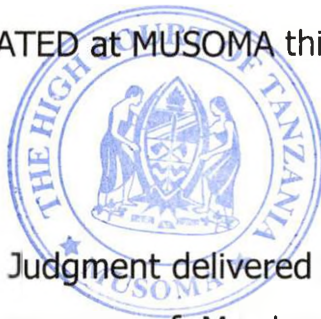
The appellant advanced the ground of sickness as the cause of delay. Certainly, I agree with Mr. Magwayega that that sickness is a sufficient reason. However, going by the appellant's affidavit and the medical report appended thereto, nothing suggesting that the appellant was sick from 30<sup>th</sup> December, 2019 when the delay started to 11<sup>th</sup> March 2020 when the application subject to this appeal was lodged to the DLHT. The medical report relied upon by the appellant and referred by the learned counsel shows that he received medical treatment at Isebania S.D. Hospital on 9<sup>th</sup> November, 2019. It appears that he was not admitted because the record shows that he was present when the ward tribunal delivered its decision 14<sup>th</sup> November, 2019.

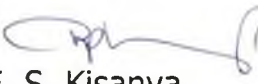
From the foregoing, I am of the view that the appellant failed to prove that the delay was caused by sickness or any other good and sufficient cause. Having considered further that, the period from 30<sup>th</sup>

December, 2019 to 11 March 2020 equivalent to seventy three (73) days were not accounted for, I find no reason to fault the decision of the District Land and Housing Tribunal for Tarime.

In view thereof, the appeal is hereby dismissed with costs. It is so ordered.

DATED at MUSOMA this 24<sup>th</sup> day of August, 2021.



  
E. S. Kisanya  
JUDGE

COURT: Judgment delivered through teleconference this 24<sup>th</sup> August, 2021 in the presence of Mr. Leonard Magwayega, learned advocate for the appellant and the respondent in person. B/C Gidion-RMA present.

Right of appeal explained.



  
E. S. Kisanya  
JUDGE  
24/08/2021