

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MUSOMA
AT MUSOMA

MISC. CIVIL APPLICATION NO. 40 OF 2021

DANIEL NDEGE APPLICANT

VERSUS

RHOBI NYAMAISA RESPONDENT

***(Application for extension of time to lodge an appeal arising from
the decision of the District Land and Housing Tribunal for Tarime
at Tarime in Land Application No. 54 of 2019)***

RULING

15th September and 28th October, 2021

KISANYA, J.:

The applicant, Daniel Ndege has lodged Chamber Summons under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2019] and section 95 of the Civil Procedure Code [Cap 33 R.E 2019]. He is praying for an extension of time within which he can lodge an appeal to challenge the decision - of the District Land and Housing Tribunal for Tarime at Tarime in Land Application No. 54 of 2019 delivered on 16th April 2021. The application is supported by an affidavit sworn by the applicant on 9th August 2021.

On the other hand, there is a counter-affidavit sworn by Rhobi Nyaimasa, the respondent herein, to contest the application.

A brief background of this matter is that, the applicant had sued the respondent in the District Land and Housing Tribunal for Tarime at Tarime.

Their dispute was on ownership of a piece of land located at Kwisarara village in Tarime. As indicated earlier, the decision of the District Land and Housing Tribunal was delivered on 16th April 2021. It ended in the respondent's favour. The applicant failed to lodge in this Court his appeal within the time required by the law, and hence the present application.

During the hearing of this application, both parties appeared in person, unrepresented.

When invited to submit in support of the application, the applicant contended that he failed to appeal timely due to sickness. He urged the Court to consider the medical document appended to the affidavit in support of the application and grant him leave to appeal out of time.

The respondent did not support the application. He submitted that the medical document relied upon by the applicant shows that the latter went to the hospital on 3rd June 2021 without indicating whether he was admitted in the hospital for more than a month. Therefore, he asked the Court to dismiss the application with costs.

Re-joining, the applicant reiterated that the delay to lodge the appeal was caused by sickness.

Having gone through the affidavit together with the counter-affidavit and the arguments advanced by both parties, it is common ground that the

applicant failed to appeal within time prescribed by the law. In terms of section 41(2) of the Land Disputes Courts Act [Cap. 216, R.E. 2019] (the LDCA), an appeal against the decision of the District Land and Housing Tribunal in the exercise of its original jurisdiction is required to be lodged within forty-five days after the date of impugned decision.

Although this application is predicated under section 14(1) of the Law of Limitation Act (supra) and section 95 of the Civil Procedure Code (supra), the applicable provision is section 41(2) of the LDCA which empowers this Court to extend the time for filing upon being satisfied that there is good cause. It reads:

"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."*

In view of the principle of overriding objective which requires the courts to uphold substantive justice, I will proceed to determine this application on merit.

Now, the issue is whether or not good cause warranting the grant of extension of time has been proved by the applicant. It is apt to point out that the law does not define what constitute good cause. However, case law has set out factors to be considered in determining whether good cause has

been established. See for instance, the case of **Tanga Cement Company Limited vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No.6 of 2001, (unreported) in which the Court of Appeal held:

"What amounts to sufficient cause has not been defined. From decided cases, a number of factors have to be taken into account including, whether or not the application has been brought promptly, the absence of any or valid explanation for delay, lack of diligence on the part of the applicant..."

See also **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).

The law is also settled that the applicant must account for each day of the delay. This position was taken in *Bushiri Hassan* (supra) where it was held 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."

It is that position which will guide this Court in considering the present application. In view of section 41(2) of the LDCA, the time within which to appeal against the decision subject to this case lapsed on 31st May 2021. It

is on record that the present application was filed 72 day later, on 11th August 2018.

In his supporting affidavit, the applicant deposed that the delay to appeal was caused by sickness. It is an established position that, sickness is good cause because it is not the choice of human being. This stance was taken in **Emanuel R. Maira vs The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported) when the Court of Appeal held:

"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike."

See also **Alasai Josia (suing by his Attorney Osca Sawuka vs Lotus Valley Limited**, Civil Application No. 498/12 of 2019, CAT at Dar es Salaam (Tanzlii).

However, in order sickness to stand as a ground for extension of time, the applicant must demonstrate how it prevented him from taking the action within time required. As that is not enough, sickness must be proved by medical evidence. I am persuaded by the decision of this Court in **Pastory J. Bunonga v Pius Tofiri**, Miscellaneous Land Application No. 12 of 2019 (tanzlii), 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 instant application, the applicant demonstrated the following: *One*, that, he was suffering from eye disease and big wound on the left leg from 19th May 2021. *Two*, that he received medical treatment at St. Clare Hospital in Mwanza on 3rd June ,2021, where it was discovered that he had malaria and eye disease. *Three*, that the doctors recommend him to use of medicine and undergo eye operation and use of medicine. *Four*, that he started a clinic for his eyes. *Five*, that after recovery, he found himself out of time to appeal.

In his endeavour to prove sickness, the applicant appended the medical laboratory request and reporting form and several receipts. Reading from the documents attached to the affidavit, it is clear that the applicant went to St. Clare Hospital on 3rd and 4th June, 2021. However, nothing suggesting that he was recommended to undergo eye operation. And, if such recommendation was made, it is not known as when the said operation was carried out. Also, the applicant did not produce evidence to prove that he was attending an eye clinic from 3rd June, 2021 and for how long.

Furthermore, the applicant did not state on oath as to when he recovered from the sickness. Therefore, it not known as to whether the applicant was sick during whole period of delay. For the foregoing, I am of the view that the applicant has not accounted for the period from 5th June to 11th August, 2021, which is more than 60 days.

All having said and done, I find this application not meritorious. It is therefore, dismissed with costs.




DATED at MUSOMA this 28th day of October, 2021.


E.S Kisanya
JUDGE

Court: Ruling delivered this 28th day of October, 2021 in the presence of the applicant and respondent. B/C Neema Likuga present.

Right of appeal is well explained.


E.S Kisanya
JUDGE
28/10/2021