

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

MISC. LAND APPLICATION NO 81 OF 2020

(Originating from Land Appeal No. 02/2019, Mbulu District Land and Housing Tribunal, Original Land Dispute No. 03/2019 at Kainam Ward Tribunal)

SILO GADIYE HHEKEAPPLICANT

VERSUS

MASSAY AMNAY RESPONDENT

RULING

19/04/2022 & 07/06/2022

KAMUZORA, J.

The Applicant preferred this application for extension of time within which to file an appeal against the decision delivered by the District Land and Housing Tribunal at Mbulu District in Land Appeal No. 3 of 2019. The application was made by way of chamber summons under section 38(1) of the Land Disputes Courts Act Cap 216 R.E 2019 and supported by an affidavit sworn by the Applicant Silo Gadiye Hheke. The application was contested through counter affidavit sworn by the Respondent Massay Amnaay.

Hearing of the application was done by way of written submissions and as a matter of legal representation, the Applicant was dully represented by Mr. Abdallah Kilobwa, learned advocate while the Respondent appeared in person. Each part filed the submission as scheduled save that no rejoinder submission was preferred by the Applicant.

In the submission in support of application the counsel for the Applicant adopted the contents of the affidavit filed in support of the application. The affidavit and the submission by the counsel for the Applicant reveal that, the Applicant was the Respondent in Land Appeal No. 03/2019 at Mbulu District Land and Housing Tribunal which originated from Kainam Ward Tribunal in land dispute No. 02/2019. That, in the judgment of the DLHT the Respondent was declared as the lawful owner of the suit land. That, the Applicant was aggrieved by the said decision and orally requested for the certified copies of judgment and proceedings proceed by the letter applying for the same on 30/06/2020.

The Applicant's counsel further submitted that, on 10/07/2020 he was supplied with copies of judgment and proceedings and decided to seek for legal assistance from a competent and qualified lawyer to assist

him to appeal against the decision of the DLHT. That, on 14/07/2014 he got seriously sick and he was locally treated at home using local herbs until 15/08/2020 when his condition became worse and he was to be sent Mbulu District Hospital. That, he was admitted from 15/08/2020 and discharged on 03/09/2020. That, after he was discharged the Applicant continued with medication at home until 20/09/2020 when he improved. That, on 22/11/2020 the Applicant obtained a lawyer and after going through the entire judgment they noted that the time to appeal had lapsed hence the Applicant preferred this application. To support his application, he cited the case of **Samson Gishosha Gabba V Charles Kingongo Gabba** [1991] TLR 38 and prayed for this application to be allowed.

Contesting the application, the Respondent submitted that, the reason advanced by the Applicant in this application lacks the legal pretext of evidence. That, section 38(1) of the Land Disputes Court's Act Cap 216 R.E 2019 provides the time frame to appeal from the District Land and Housing Tribunal to the High Court to be 60 days after the date of the decision but the court may upon good cause extend the time for filing the appeal before or after such period had lapse.

On the allegation that the Applicant was sick and treated with local herbs from 14/7/2020 to 15/8/2020 the Respondent submitted that, the allegation is unfounded and fabricated as they lack documentation to prove the alleges sickness. That, the Applicant was not seriously ill hence he was in a position to lodge his appeal on time.

On the fact that the Applicant was sent to Mbulu District Hospital the Respondent submitted that, it is an afterthought intended to mislead this court as a prudent person should go to hospital when he felt sick and not use local herbs. That, even the medical report was not supplied to the Respondent for him to trace its genuineness. To buttress his submission, he cited the case of **Bushfire Hassan Vs Latina Lucia Masaya**, Civil Application No. 3 of 2007.

The Respondent contended that, the Applicant delay is almost 27 days since the judgment date and the reasons given by the Applicant are unmerited and insufficient to establish the good cause of delay as stipulated by the law. In support of this argument, he cited the case of **Tanzania Rent a car Ltd v. Peter Kihumu**, Civil Application No 226/1 of 2017 (Unreported). In conclusion, the Respondent prays that the application be dismissed with costs as the Applicant did not show good cause for the delay.

That being the brief submission made by the parties for and against the application, the pertinent matter before this court is whether the Applicant has adduced sufficient reasons for the grant of extension of time. The grant of extension of time is a matter of discretion of the court, the discretion which however must be exercised judiciously.

The term judicial discretion is the exercise of judgment by a judge or court based on what is fair under the circumstance and guided by the rules and principles of law, the court has to demonstrate however briefly how the discretion has been exercised to reach the decision it takes. For this see the case of **Mwita Mhere Vs Republic** [2005] TLR 107 page 113.

In **Mbogo Vs. Shah** [1968] EA 93, (Supra) certain factors were highlighted to assist the court in deciding to either grant or refuse to grant extension of time. It was held: -

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay/ whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended".

The Court of Appeal of Tanzania also formulated the guidelines to be considered in granting the extension of time in the case of **Lyamuya**

Construction Company Limited V Board of Registered Trustees of Young women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (Unreported). The court held that: -

"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, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

In the case at hand reading the affidavit filed in support of the application, the Applicant has relied on the reason of sickness for the grant of extension of time. The Court of Appeal in the case of **John David Kashekya Vs the Attorney General**, Civil Application No. 1 of 2012 (Unreported) cited in the case of **Pimark Profesyonel Mutfack Limited Sirket Vs Pimak Tanzania Ltd & Another**, Misc. Commercial Case No 55/2018 HC at Dar es Salaam (Unreported) page 9 held that: -

"Sickness is a condition which is experienced by the person who is sick. It is not a shared experience. Except for children who are not

yet in a position to express their feelings, it is the sick person who can express his/her condition whether he/she has strength to move, work and do whatever kind of work he is required to do. In this regard, it is the Applicant who says he was sick and produced medical chits to show that he reported to a doctor for check-up... There is evidence from the Respondent to show that after that period, his condition immediately became better and he was able to come to court and pursue his case. Under such circumstance, I do not see reasons of doubting his health condition. I find the reasons for sickness given by the Applicant to be sufficient reason for granting the application for extension of time to file..."

Surely, the above holding equally applies in the case under consideration. The Applicant under paragraph 10, 11 and 12 of his affidavit stated that, he was sick and he received local treatment before he opted to go to hospital for medical treatment. It is deponed and submitted that the applicant was hospitalised for almost two weeks. It is the claim by the Respondent that if the Applicant was very sick, he would have obtained medical attention as opposed to local treatment.

The law requires the appeal against the decision of the DLHT to be filed within 60 days from the date of the judgment. The decision of the DLHT was delivered on 30/06/2020 thus the appeal was supposed to be filed by 30/08/2020. With that in mind, by 14/07/2020 the time claimed by the applicant to be used local treatment, the applicant was still within

time to appeal. It is the requirement of the law that the applicant is responsible to account for days of delay and not for the days he was still within time to appeal. For that reason, the Applicant is to account for the period from 30/08/2020 which is the last date for appeal to the date this application was filed in court on 13/10/2022.

It was submitted and deponed in the affidavit under paragraph 11 that the Applicant was sick and was admitted at Mbulu District Hospital from 15/08/2020 and discharged on 03/09/2020. The discharge document was attached to the Applicant's affidavit. It was also deponed and submitted that, after the discharge the Applicant was not in good condition and it took him sometimes to recover before he could approach a lawyer for legal action. It is the settled principle of law in most of the cases including the case of **Pimark Profesyonel Mutfack Limited Sirket** (supra) that, sickness can be a ground for extension of time. Thus, in this matter the applicant was able to show that when he started to run out of time, he was sick and unable to take any legal action. However, he is supposed to account for the delay after he had recovered from sickness.

The applicant claimed that the recovery was fully attained by 22/09/2022 and he obtained legal assistance and filed the present

application on 13/10/2020. The Respondent pointed out and I agree that the delay was 27 days. Now the question is whether the applicant was able to account for all days of delay and whether the delay of 27 days was reasonable.

I agree with the respondent and the reasoning in the case on **Bushfire Hassan** (supra) cited by the respondent that the applicant has to account for each day of delay. Based on the facts deponed in the affidavit and the submission by the counsel for the applicant this court is satisfied that the delay was not inordinate. The circumstances suggest that the applicant accounted for the delay as after the recovery, the period of 27 used by the applicant to seek for legal advice and file present application is reasonable for a lay person struggling to pursue his right. It cannot be considered as inordinate or that there was negligence on the party of the applicant in pursuing his right.

It is therefore my conclusion that, the delay in lodging the appeal before this court was reasonable and the applicant well demonstrated and accounted for the delay. That being said, I grant the Application for extension of time for the Applicant to lodge his appeal before this court within period of 21 days from the date of this ruling. No Order for costs is issued. It is so ordered.

DATED at **ARUSHA** this, 07th day of June 2022

