

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC LAND APPLICATION NO. 07 OF 2022

(Arising from the decision of the High Court of Tanzania at Mwanza by Hon. Manyanda, J in Land appeal NO. 39 of 2019, the decision of the District Land and Housing Tribunal for Mwanza at Mwanza in land Appeal No. 90 of 2018, Original decision of Pasiansi Ward Tribunal No. 04 of 2018)

**MORIS IZDORI EZEBIO (The administrator of the estate of the late
ISIDORI EZEBIO)APPLICANT**

VERSUS

**PETER LUCAS NGASA (The administrator of the estate of the late
ERNEST LUGENDO) RESPONDENT**

RULING

26th July & 21st October, 2022

ITEMBA, J.

The applicant herein is aggrieved by the decision of this court (Hon. Manyanda,J) issued on 18.8.2022 in Land Appeal No. 39/2019. He has lodged this application praying for the court to extend time within which to lodge and serve notice of appeal, to lodge letter requesting for copies of judgement and other related records and to lodge an application for certificate on point Law to appeal to the Court of Appeal.

The application is supported by an affidavit of Moris Izdory Ezebio an administrator of estate of Izdory Ezebio of which the grounds for application are stated.



The respondent has filed a counter affidavit sworn by Peter Lucas Ngasa as an administrator of Estate of Ernest Lugendo, opposing the application.

When the application was called for hearing, the respondent who was duly served and had appeared previously, did not turn up. As properly moved by the applicant's counsel, Mr. Majid Kangile, the court ordered for the application to be heard *ex-parte*.

Submitting on the grounds for application, Mr. Kangile relied on the applicant's affidavit stating that the applicant was an old man, and that soon after receiving the impugned judgment, he got seriously sick and he suffered a stroke. That, the deceased died on 26th of June 2021 after being admitted in different hospitals. He added that, following his death, the deceased's family initiated Probate and administration Cause no.183 of 2021 in the Primary Court of Ilemela, to appoint an administrator of his estate. That, the process took a long time due to the trial Magistrate being on leave and eventually, form no. IV was issued on 28th day of January, 2022 where Moris Izdory Ezebio was appointed an administrator.

He stated further that, after the said appointment of an administrator, it is when the counsel for the applicant filed this application on 1st day of February, 2022 which is just 3 days later. In support of this

application, the applicant has also attached the copies of impugned judgement, letter of appointment of an administrator, a letter from Sekou Toure Hospital concerning the health status of the deceased's and the applicant's death certificate.

Apart from that explanation, Mr. Kangile added that, going through the impugned judgment, he observed the illegalities which are on the face of records, to the extent that when a person uses land as a licensee, he cannot benefit from the doctrine of adverse possession. He also stated that it was not proper for the High Court to automatically declare the respondent lawful owners in the absence of proof of lease agreement, and that the High Court disregarded the fact that, at Ward tribunal, it was the appellant who was declared a lawful owner and not the respondent. To him, these three grounds amount to illegality which should be considered as a ground for granting an extension of time.

The respondent was not present as mentioned above, in his counter affidavit he opposed the application stating that there was no proof that the applicant was making follow up of form no. IV and that the magistrate was on leave. He also disputed the grounds raised as illegality stating that there was no illegality and the court was justified in reaching its decision.



The issue to be pondered by the court is whether the application has merit. Section 11(1) of the Appellate Jurisdiction Act Cap 141 [R.E 2019] is to the effect that:

"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

There is no specific definition of what amounts to good cause. However, from decided cases, certain factors provide guidance on whether or not the applicant has shown good cause. Some of these basic factors are found in the landmark Court's decision 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 mentioned the following factors for consideration:

- "(a) The applicant must account for all the period for delay;*
- (b) The delay should not be inordinate;*
- (c) The applicant must show diligence, and 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 sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged".

Furthermore, in **Osward Masatu Mwizarubi v Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court stated that:-

"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion"

Therefore, the court has the duty to consider the grounds for application of extension of time against these factors. In this application, the applicant has delayed by about one year and six months. The main ground stated being Izidori Ezebio, who was the appellant was sick and later died and the efforts to appoint an administrator took long time. However, this application was filed immediately after the administrator of estate was put in place. As per the records and as stated by the applicant, the judgment was issued on 18th of December 2020 and the applicant started to feel sick up to the moment when he lost his life on 26th June 2021. This explanation is supported by the letter from Sekou Toure hospital regarding the applicant's health status, attached at TMA 3, which

stated that the applicant was sick from December 2020 and died on 26th of June 2021. Based on this explanation, I find that the duration between December 2020 and June 2021 is well accounted for. It is further explained that the family of the deceased, the then appellant, initiated probate cause no. 183/2021 to appoint an administrator of the applicant's estate. We are not told when exactly was the said probate cause filed before the court, but we are told that the appointment was made on 8th of November 2021, which is five months after the deceased's death and this duration is not excessive, in my view. Further, the applicant's counsel states that form no. IV which shows that Moris Izdori Ezebio was appointed an administrator, was not issued until 28th of January 2022. The said form is attached as TMA1 and it was signed on 28th of January 2022. Considering that this application was filed on 1st of February 2022, I find that the duration after the death of the applicant is well accounted for, as the family was in the process of finding the administrator of estate and the moment the administrator was in place, three days later, the application was filed.

In accordance with the legal principles in the above-mentioned case laws, I find that the applicant has well accounted for the period of delay, and the applicant was not negligent as the former applicant who is his



father, has been sick, a situation which resulted into his death. That being said, I find that a sufficient cause has been well established and for that reason, I will not dwell into other grounds of illegality.


In the finality, the application is granted as prayed for in the chamber summons.

No orders as to costs.

It is so ordered.

DATED at **MWANZA** this 21st day of October, 2022.




L. J. ITEMBA
JUDGE

Ruling delivered under my hand and seal of the court in chambers, in presence of the respondent in person and Ignas, RMA and in the absence of the applicant.



L. J. ITEMBA
JUDGE
21/10/2022