

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

MISC LAND APPLICATION NO. 12 OF 2023

(Arising from the District Land and Housing Tribunal for Morogoro, at

Morogoro in Misc. Land Application No. 518 of 2021)

VALERY DAMIAN KINYAMALE APPLICANT

VERSUS

GRACE ALPHONS MAKOMBOLA RESPONDENT

RULING

14th & 30th June, 2023

CHABA, J.


The applicant, VALERY DAMIAN KINYAMALE has filed this application under section 41 (2) of the Land Disputes Courts Act, [CAP. 216 R. E, 2019], seeking for enlargement of time within which to file an appeal out of the statutory time against the judgment and decree of the District Land and Housing Tribunal for Morogoro, (the Tribunal) in Land Application No. 518 of 2021. The application was supported by an affidavit sworn by the applicant herein.

At the hearing of the application, the applicant was represented by Ms. Kanisia Komba, learned advocate whereas the respondent enjoyed the services of Mr. Jovin Manyama, also learned advocate. By consensus of

both parties, leave of the Court was sought and granted to the effect that, the instant application be disposed of by way of written submissions. Both parties obediently filed their respective submissions pursuant to the Court's scheduled orders.

Submitting in support of the application, the learned advocate Ms. Kanisia Komba who entered appearance for the applicant, onset prayed to adopt the chamber summons together with the applicant's affidavit and all attachments thereto so as to form part and parcel of her submission. Relying upon the applicant's application, the supporting affidavit and her written submission, Ms. Komba advanced one major reason being the cause for the delay in filing the intended appeal. She highlighted that, due to the applicant's health condition, he failed to file an appeal within time. She averred that, soon after the delivery of the judgment of the DLHT, the applicant suffered from Hypertension with visual problems (Hypertensive Retinopathy), hence he had to attend orthopaedic and physiotherapy clinic at Morogoro Regional Referral Hospital early in the month of October, 2022.

Being fortified by the decision of the Court of Appeal of Tanzania in the case of **Murtaza Mohamed Raza Virani & Another Vs. Mehboob Hassanali Versi (Civil Application No. 448 of 2020) [2023] TZCA 6 (7 February 2023)** which discussed in detail the issue of sickness as a sufficient reason for extension of time, the learned advocate prayed the Court to grant this application with costs.



On his part, the learned advocate for the respondent opposed the applicant's submission in its entirety. In his submission, he began by placing reliance in the cases of **Lyamuya Construction Co. Ltd Vs. Board of Registered of Young Women's Christian Association of Tanzania (Civil Application No. 2 of 2010) [2011] TZCA 4 (3 October 2011)** and **Dar Es Salam City Council Vs. Group Security Co. Ltd**, Civil Application No. 234 of 2015 (All unreported), and proceeded to argue that this application has no merits on the ground that, the applicant has failed to account for 82 days of delay, from the date of the delivery of the judgment of the DLHT to the day the instant application was filed before this Court.

Mr. Manyama went on to submit that, the medical report of the applicant (Annexure A2) was drafted on the 2nd October, 2022 and the statutory time limit was due up to 14th November, 2022, hence the applicant was still within time to lodge the intended appeal. According to him, apparently there are no convincing explanations from the applicant as to why he was late to file an appeal for further 87 days and that the applicant has even failed to exhibit that he was really prevented by sickness to lodge an appeal within statutory prescribed time. In his view therefore, no sufficient reasons have been demonstrated by the applicant to move this Court to extend the time sought by the applicant.

Rejoining on the submission advanced by Mr. Manyama, the counsel for the applicant, Ms. Komba insisted that the applicant got seriously sick soon after

the delivery of the judgment of the DLHT, hence he failed to file the appeal in time. He therefore, prayed for the application to be granted with subsequent costs to follow in the petition for appeal.

I have carefully read and considered the rival submissions from both sides. It is crystal clear that both sides are at one that, it is an established principle of law that the Court has discretionary power to grant extension of time upon good cause being shown. I agree with the learned advocates because that is the correct current position of the law. **[See: Benedict Mumello Vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (CAT-DSM), **Tanga Cement Co. Vs. Jumanne Masangwa and Another**, Civil Application No. 6 of 2001 (unreported); **Sospter Lulenga Vs. Republic**, Criminal Appeal No. 107 of 2006, CAT at Dodoma (unreported); and **Ludger Bernard Nyoni Vs. National Housing Corporation**, Civil Application No. 372/01 of 2018 (unreported)]. For instance, in **Benedict Mumello's case** (supra), the Court of Appeal of Tanzania held that:

"It is the trite law that an application for the extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

Similarly, in **Tanga Cement Co. Vs. Jumanne Masangwa and Another**, (supra) the Court had this to say:



"This unfettered discretion of the court, however, has to be exercised judicially, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly: the absence of any valid explanation for the delay: lack of diligence on the part of the applicant."

Now that being the settled position of the law, the issue for consideration and determination in this application is whether the applicant has shown good cause for being granted extension of time to lodge the intended appeal.

In the instant application, I must point out at the outset that, the only reason for delay shown in the affidavit supporting the application for extension of time, as well as the written submissions in chief filed in support of the application, was that the applicant got seriously sick soon after the DLHT had been delivered the decision sought to be challenged dated 30th September, 2022.

It is a trite law that, when sickness is alleged as a reason for delay, then, the same has to be proved to the satisfaction of the Court, or sufficient explanations have to be given to convince the Court that the applicant was really sick. In such explanations, the applicant is supposed to state the dates and days in which he or she was sick and date of recovery. This Court was

faced with a similar situation in the case of **Jute Ally Vs. Lucas Komba and Aloyce Msafiri**, Civil application No. 484/17 of 2019 (HC), (unreported) wherein the Court nailed it all held among other things that: -

"Sickness could amount to a good cause for extension of time, but it is subject to proof by accounting for all days of delay alleged to be the period of sickness"

[See also the cases of **Fredrick Mdimu Vs. Cultural Heritage Ltd**, Revision No. 19 of 2011, High Court Labour, Division at Dar Es Salaam, (unreported) and **Frank Mngoma Vs. Everina Yakobo**, Misc. Land Application No. 35 of 2019, High Court of Tanzania, at Tanga, (unreported)]. In the case of **Shembilu Shefaya Vs. Omari Ally** [1992] TLR 245, an application for extension of time on basis of sickness was rejected because the appellant failed to provide thorough explanation regarding the sickness. The CAT was of the view that in order for sickness to be accepted as a ground for delay, there must be evidence to show that the applicant was sick and incapable of taking the steps, he was required to take the Court throughout the alleged period of sickness.


Now reverting to the matter under consideration, I find it apposite to start my deliberation by firstly scrutinizing the letter from Morogoro Regional Hospital dated 02th October, 2022. The said letter shows that, the appellant was complaining of back pain and difficult to ambulate. The letter further states that, applicant at that particular time was continuing with antihypertensive



drugs and advised to attend orthopaedic and physiotherapy clinic. However, the applicant has not disclosed the period within which he was sick meanwhile attending the said clinics. Further, he has not stated the date of his recovery. Frankly speaking, under the circumstance of this case, the Court has failed to relate the days of delay to the alleged sickness.

Being backed up with the reasoning from the above authorities, I concur with the submission advanced by Mr. Manyama, the learned advocate for the respondent that the reason of sickness put forward by the applicant has no merits. This is because, there is no sufficient evidence to prove that the applicant was sick the whole period of delay, that is from 14th November, 2023 when the time within which he could lodge the intended appeal was due until the time when he lodged the instant application.

As correctly submitted by the learned advocate for the respondent, it is settled law that in an application for extension of time the applicant is supposed to account for each and every day of the delay as it was expounded by the Court in the cases of **Said Nassor Zahor and Others Vs. Nassor Zahor Abdallah El Nabahany and Another**, Civil Application No. 278/15 of 2016; **Bushfire Hassan Vs. Latina Lucia Masaya**, Civil Application No. 3 of 2007; **Tanzania Ports Authority Vs. Pembe Flour Mills Ltd**, Civil Application No. 49 of 2009, CAT at DSM and **Azizi Mohamed Vs. Republic**, Criminal Application No. 84/07 of 2019, CAT at Mtwara, (All unreported), to mention a few.



For instance, in the case of **Said Nassor Zahor and Others Vs. Nassor Zahor Abdallah El Nabahany** (supra), the Court had the following to state, I quote:

"...any appellant seeking extension of time is required to account for each day of delay."

In another case of **Bushfire Hassan Vs. Latina Lucia Masaya** (supra), the Court of Appeal of Tanzania held inter-alia 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".

Fortified by what has been gathered from above cited cases, I am of a settled view that, the appellant was supposed to account for each day he delayed to file his appeal before this Court including disclosing what transpired from the day he recovered to the day he filed the instant application. The explanations from the letter of the Morogoro Regional Referral hospital (Annexure A2) relied upon by the applicant is not enough, it leaves a lot to be desired in respect of the days unaccounted for.

From long standing and firmly established legal principles applicable in considering applications for extension of time discussed herein above, it is my considered opinion that, the applicant has failed to adduce sufficient reasons

for delay to move this Court exercise its discretionary power to extend the time sought by the applicant. Accordingly, this application is non-meritorious and it is hereby dismissed with no order as to costs. **It is so ordered.**

DATED at **MOROGORO** this 30th day of June, 2023.


M. J. CHABA

JUDGE

30/06/2023

