

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

MISC. LAND APPLICATION NO 7 OF 2023

(Arising from Land Appeal No. 25 of 2021 of the High Court of Tanzania at Tabora
and Originating from Misc. Land Application No 46 of 2019 of the District Land and
Housing Tribunal for Tabora)

MWAKA MUSTAFA YAKUTI *(As Administratrix of
the estate of the late Mustafa Juma Yakuti)***APPLICANT**

VERSUS

MONIKA SIMBA..... **RESPONDENT**

RULING

Date of Last Order: 15/06/2023

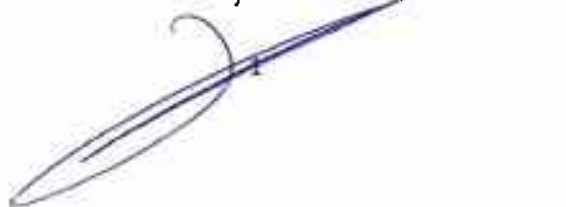
Date of Delivery: 27/06/2023

MATUMA, J.

Mwaka Mustafa Yakuti has filed this application praying for this Court to extend time within which she can file a notice of appeal to the Court of Appeal against the decision of this Court in Land Case Appeal No. 25 of 2021.

The application is made under S.11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019, and supported by an affidavit sworn by the applicant herself (Mwaka Mustafa Yakuti).

At the hearing of this application, the Applicant was represented by M/S Flavia Francis learned advocate while the Respondent was represented by Mr. Emmanuel Musyani learned advocate.



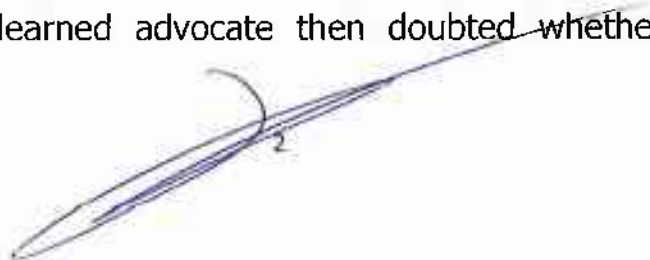
In her submissions, M/S. Flavia Francis learned advocate adopted the contents of the applicant's affidavit. She then made a brief submission based on the contents of the affidavit to the effect that the applicant's failure to lodge a notice of appeal in time was illness. That, after the delivery of the impugned judgment the applicant intended to appeal to the Court of Appeal but before she could initiate the process, she started to feel sick on 11th December, 2022 and recovered on 6th February, 2023.

The learned advocate referred this court to the letter dated 08/02/2023 which was signed by Doctor Baguma M.M. in companying the affidavit to the effect that the Applicant suffered from ***Abnormal Uterine Bleeding*** for more than a month. The learned advocate fortified her arguments with the case of ***Richard Mlagala and 9 Others Versus Aikael Minja And 3 Others, Civil Application No. 160 Of 2015*** which acknowledged sickness as a good ground for extension of time.

On the other hand, Mr. Emmanuel Musyani learned advocate for the respondent objected the application. He also adopted the counter affidavit sworn by himself.

The learned advocate argued that the respondent did not account each day of the delay as the law mandatorily requires.

The learned advocate further averred that there is nowhere in the applicant's affidavit or annexure stating the date when she was exactly admitted in the hospital and the actual date she was discharged. He argued that the letter attached to the affidavit from Dr. Baguma does not state when the applicant was admitted and when she was discharged. The learned advocate then doubted whether really the



Applicant's delay was due to sickness. He contended that the applicant was not due diligent and therefore her application deserves to be dismissed with costs.

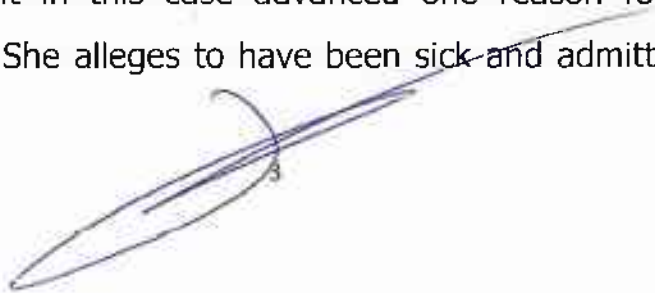
In rejoinder submission, M/S Flavia learned advocate conceded that the affidavit of the applicant and its annexure does not disclose the date when the applicant was admitted and when she was discharged from the hospital but the chamber summons is very clear that this application shall be supported by an affidavit and **such other and further arguments to be advanced at the time of hearing the application.**

To her, the oral submission she made regarding the dates within which the Applicant was sick is covered with such a phrase in the Chamber Summons. She also argued that it is not a legal requirement to attach the admission or discharge documents. The letter attached is enough.

After listening to the rival submissions by both parties and going through the records of this application, the main issue for determination is whether or not sufficient cause has been established by the applicant to warrant this Court exercise its discretion to grant extension of time to file a notice of appeal out of time.

It is trite law that whoever applies for extension of time must account for each day of the delay. See; ***Lyamuya Construction Co. Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 Of 2010.***

The applicant in this case advanced one reason for her delay which is sickness. She alleges to have been sick and admitted at Kitete



Hospital at the time she was about to initiate the appeal process. According to the oral submission of her advocate, the applicant fell sick on 11/12/2022 and recovered on 06/02/2023.

This was strongly objected to by Mr. Musyani who stated that the applicant has failed to prove to the Court when she was admitted and discharged from the said hospital and neither does the letter from the doctor, she annexed show that the applicant was indeed admitted at the said hospital.

Since the law requires each day of the delay to be accounted for, if we are to believe that the applicant indeed fell sick on 11/12/2022, she then failed to account for the eight (8) days prior to her sickness from the date the impugned judgment was delivered.

As rightly argued by Mr. Musyani learned advocate, the Doctor's letter referred to by the applicant is helpless because the same does not even explain whether the Applicant was treated as an Out Door Patient or as an admitted patient to that hospital. It does not tell when exactly the applicant attended to hospital and started the treatment.

The letter is addressed to whom **"it may concern"** suggesting that it was sought and obtained for general purposes. Such a letter is not a medical record and the applicant's advocate has vigorously argued that it is not a legal requirement to attach medical records in the application.

With due respect to the learned advocate for the Applicant, medical records when annexed to the Application may persuade the court to see the reality of what befallen the Applicant and subsequently grant the application. It is not necessary that the Applicant discloses her illness but at least she could bring the admission and discharging

documents to show that she was really admitted in the hospital. Failure to do so was done at her own detriment with nobody to blame.

Not only that but also from 06/02/2023 the date when the learned advocate for the Applicant submitted that the Applicant recovered and or from 08/02/2023 when the Applicant obtained the letter from the Doctor which shows that she was by that time doing well, the Applicant relaxed without taking any action until 22/02/2023 when she filed the instant application which is seventeen (17) or fourteen (14) days later.

That period is as well not accounted for as it was for the eight (8) days prior to the alleged sickness.

I therefore share the same view with Mr. Musyani learned advocate that the Applicant has not accounted for the delay and what she is seeking in this court is just sympathy. This court being no one's mother cannot act on the negligence, apathy, and sloppiness of either party to grant extension of time which ought to be rejected.

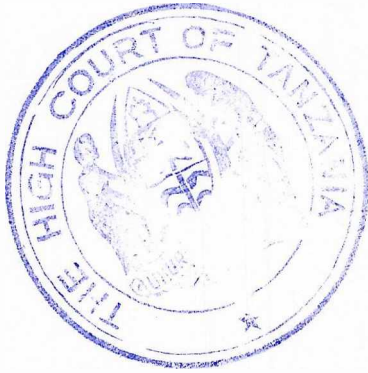
I thus find that this application has been brought without any sufficient cause and I accordingly dismiss it with costs. Whoever aggrieved may take further steps to the Court of Appeal of Tanzania. It is so ordered.





MATUMA
JUDGE
27/06/2023

Court: Ruling is delivered this 27th day of June, 2023 in presence of applicant and Mr. Kelvin Kayaga Advocate holding brief for Musyani Advocate for Respondent.

Right to appeal is hereby explained.




N.W. MWAKATOBÉ
DEPUTY REGISTRAR
27/6/2023