

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY)

AT MUSOMA

Misc. LAND APPLICATION No. 16 OF 2023

*(Arising from the High Court [Musoma Sub Registry] in Land Appeal No.
36 of 2022; originating from the District Land and Housing Tribunal for
Mara at Tarime in Land Application No. 63 of 2019)*

COL. MACHERA MWISE MACHERA APPLICANT

Versus

1. MWITA CHACHA NYAHERI } **RESPONDENTS**
2. SAMWELI MWITA CHACHA }

RULING

27.07.2023 & 31.07.2023
Mtulya, J.:

On 15th day of November 2022, this court had resolved **Land Appeal No. 36 of 2022** (the appeal) between **Col. Machera Mwise Machera** (the applicant) and **Mr. Mwita Chacha Nyaheri & Mr. Samweli Mwita Chacha** (the respondents). In its decision, this court had decided in favor of the respondents and at page 11 of the decision, held that: *the appellants are rightful owners of the disputed land.*

The applicant was aggrieved by the judgment in the appeal of this court and wanted to prefer an appeal to the **Court of Appeal** (the Court) to dispute the decision. However, he found himself out of statutory time to lodge an appeal within time

hence approached this court on 18th January 2023 and filed **Misc. Land Application No. 16 of 2023** (the application) praying for this court to enlarge time period within which to apply for leave to appeal to the Court. The application was scheduled for hearing on 27th July 2023 and the applicant had hired the legal services of **Mr. Hassan Mawazo**, learned counsel, to argue the application. In persuading this court to decide in favor of the applicant, Mr. Mawazo had produced two reasons of the delay, *viz.* first, delay of this court to issue a copy of the decision in the appeal within time; and second, sickness on part of the applicant.

In registering necessary materials in favor of the reasons, Mr. Mawazo submitted that this court had pronounced the decision in the appeal on 15th November 2022, but had declined to issue the copy of the judgment until 15th December 2022. According to Mr. Mawazo, the thirty (30) days of the delay may be excluded in the accountability of days of the delay as per law enacted in section 19 (1) of the **Law of Limitation Act [Cap. 89 R.E. 2019]** (the Law of Limitation). In Mr. Mawazo's opinion, the applicant had drafted two letters on 16th November 2022 for notice of intention to appeal to the Court (the notice) and request for the copy of the decision of this court, and was busy

following up the copy of the decision in this court and through *Tanzlii* web page without any success since delivery of the decision to 15th December 2022.

Regarding the second reason, Mr. Mawazo submitted that the applicant was sick and admitted at Borega Dispensary at Tarime District on 30th November 2022 and discharged on 14th December 2022 and was attending clinic for subsequent medical check-ups to 13th January 2023. According to Mr. Mawazo, the applicant felt well on 14th January 2023 and moved to instruct him to file the present application and accordingly filed on 18th January 2023.

With regard to four (4) days gap between 14th January 2023 and 18th January 2023, Mr. Mawazo submitted that the he was following necessary steps for drafting and filing documents in this court. In his opinion, sickness has been identified by this court to be a good reason for enlargement of time and moved on to cite the precedent in **Magreth Makuba v. Nisile Ernest**, Misc. Land Application No. 101 of 2018 in support of the submission.

Replying the submission, the respondents who were lay persons and appeared without any legal representation had resisted the reasons and produced four (4) reasons in favor of

the position, namely: the applicant is their relative and neighbor and was not sick in the indicated period as they saw him cultivating his land; second, a senior military officer of colonel species cannot be treated at a very low quality local Borega Dispensary in Tarime District whereas military senior officials of his rank are treated in special military hospitals; third, the copies of judgment were available within time, but the applicant had declined an appeal within time; and finally, the issue of sickness cannot restrict the applicant to call and instruct learned advocates to file appeal within time. According to the respondents, the applicant has produced fake and cooked reasons in a move to disturb their enjoyment of the disputed land.

In a brief rejoinder, Mr. Mawazo submitted that the four (4) produced reasons of protest by the applicants have no any merit. Mr. Mawazo thinks that: first, sickness is established by documents which the applicant has produced indicating that he was sick in the cited period; second, the applicant was at Nyamwaga area in Tarime District area and became sick at Nyamwaga hence could not search for special military hospitals in such circumstance and in any case there is no legal requirement to that effect; third, the applicant was supplied with

the copy of the judgment of this court on 15th December 2022; and finally, due to sickness, the applicant was unable to access legal services in Tarime District.

The law regulating enlargement of time to file an appeal or application out of time, as enacted in section 14 (1) of the Law of Limitation, requires applicants to produce reasonable or sufficient cause. However, it is unfortunate that the law is silent on the meaning of reasonable or sufficient cause (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987). According to the Court, reasonable or sufficient cause cannot be laid down by any hard and fast rules (see: **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010).

The term reasonable or sufficient cause therefore is a relative one and is dependent upon party seeking enlargement of time to provide relevant materials in order to move the court to exercise its discretionary mandate in his favor. However, the Court, in my opinion, has produced two (2) criteria on the subject to assist judges and magistrates in resolving disputes of this nature, namely: first, promptness of the applicant after becoming aware that he is out of time (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani** (supra); **Royal Insurance**

Tanzania Limited v. Kiwengwa Strand Hotel Limited, Civil Application No. 116 of 2008); and second, accountability on every day of the delay (see: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007).

In brief, inordinate delay or negligence on part of applicants for enlargement of time or their learned counsels is discouraged by our superior court (see: **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010). It was resolved so to avoid applicants who file their application as and when they so wish (**Bank of Tanzania v. Saidi Malinda & 30 Others**, Civil Ref. 3 of 2014).

In the present application, the applicant has registered two relevant materials, namely: first, sickness; and second, failure of this court to issue the copy of judgment of the appeal at earliest time after pronouncement of the judgment. The first reason on sickness has already been identified as one of the pigeon holes in applications for enlargement of time. There is in place a large bundle of precedents in support of the pigeon hole (see: **Magreth Makuba v. Nisile Ernest** (supra); **Sweetbert Ndebea v. Nestory Tigwera**, Civil Application No. 3 of 2019; **Kapapa Kumpindi v. The Plant Manager, Tanzania Breweries Limited**,

Civil Application No. 6 of 2010; **Benezeth Mwebesi & Two Others v. Baraka Peter**, Misc. Civil Application No. 46 of 2019; and **Safina Amri v. George Ruhinda**, Misc. Land Application No. 66 of 2018).

The reason in support of the position is obvious that sickness is brought to human persons by almighty God at any time and at any place without any prior consultation. However, reading the indicated precedents as a whole, this court has qualified the pigeon hole of sickness to include necessary materials in proof of medical record from recognized or registered hospitals in order to avoid mere allegations or fake medical records (see: **Magreth Makuba v. Nisile Ernest** (supra) and **Richard Mgala & Nine Others v. Aikael Minja & Four Others**, Civil Application No. 160 of 2015).

In the present application, both parties are in agreement that Borega Dispensary is located at Tarime District and on 30th November 2022, the applicant attended the Dispensary and was discharged on 14th December 2022. The medical record shows further that the applicant was attending clinic for subsequent medical check-ups to 13th January 2023. I therefore hold that the applicant was sick as from 30th November 2022 to 13th January 2023.

The next question derived from the practice of this court and the Court regarding applications like the present one, is: *whether the applicant had received the copy of judgment on 15th December 2023*. The applicant's learned counsel, Mr. Mawazo submitted that the applicant had drafted and registered a letter asking for the copy of the judgment, but was not supplied within time despite several physical follow-ups at this court and through electronic science in *Tanzlji* web page.

The respondents, on the other hand, being lay persons have submitted that the applicant has produced cooked reasons and further enquired proof of the same in the third paragraph of the counter affidavit. The applicant's counsel had declined to reply on the question of proof of his statement on receipt of the copy of judgment at the eighth paragraph of the affidavit and also had remained mute during submission in favor of the application. As there is no proof of the same, it is difficult for this court to believe the applicant had received the copy on the alleged date.

Much as I am aware of the current practice in this court, especially after introduction of science of Information Communication Technology and *Tanzlji* web page, it is next to impossible for this court to decline copies of judgments for a month or so. If issuing of copies of decisions pronounced by this

court is declined on the same day of the decision, applicants are required to attach in their applications proof of letters from Deputy Registrar of this court or copies of courts' stakeholders' attendance registers located at main entrances or any other proof that displays receipt date. Similarly, there is no harm if reminder letters are attached in support of applications. All these species of evidence were declined by the applicant in the present application. His application cannot be successful.

It is unfortunate that even if I assume the applicant was vigilant in following up his documents for appeal purposes by filing the notice and letter asking for the copy of the judgment in the appeal immediately after the delivery of the judgment, the question shall remain as to: *which period is reasonable for an applicant to file an appeal after receipt of the necessary documents*. The reply from the Court is that the applicant must be prompt after becoming aware that he is out of time and file application for enlargement of time in good faith (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (supra)).

In the present case, record shows that the applicant alleged to have received the copy of judgment of the appeal on 15th December 2022. However, he was sick and attending clinic since

30th November 2022 to 13th January 2023. Assuming all materials are equal on the record, the question is: *whether the applicant or his learned counsel was prompt in bringing the present application in this court.* According to Mr. Mawazo, he was cell-phoned and instructed by the applicant to file the present application on 14th January 2023 and filed the same on 18th January 2023.

The applicant may be said he was prompt in calling and instructing Mr. Mawazo to draft and file the present application. However, Mr. Mawazo, being aware the applicant is out of time, he took four (4) good days to prepare and lodge the instant application. The current standard practice is that applicants for enlargement of time must account on every day of the delay (see: **Bushiri Hassan v. Latifa Lukio Mashayo**, (supra); **Bariki Israel v. The Republic**, Criminal Application No. 4 of 2011; and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 Of 2014).

Mr. Mawazo was silent in his affidavit and submission in this court in favor of the application on what he was doing on each day of the delay in the indicated four (4) days of the delay, running from 14th January 2023 to 18th January 2023. This displays apathy and negligence on part of the applicant's counsel

which is discouraged by the Court in the precedent of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra), which had resolved that: *applicants for enlargement of time must show diligence and not apathy or negligence or sloppiness in prosecuting their actions that they intend to take.*

I am aware, the argument may be put in place that it was negligence on part of the learned counsel, which cannot be in any way associated with the applicant, who is a lay person unaware of the Court's precedents. This argument has already received the Court's decision in **Transport Equipment Ltd v. D.P. Valambhia [1993] TLR 91**, where at page 101, it resolved that: *what is glaring to the eye here is sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time.*

The thinking has received support of the same Court in a bunch of precedents (see: **Transport Equipment Ltd Versus D.P. Valambhia [1993] TLR 91**; **Umoja Garage Versus National Bank of Commerce [1997] TLR 109**; **Inspector Sadiki and others Versus Gerald Nkya [1997] TLR 290**). This court has no options of producing other interpolations. It has to abide with the Court's

position and accordingly cherish the same without any reservations.

Having said so, I hold that the applicant has failed to persuade this court to decide in his favor for lack of necessary materials to establish to have received the copy of the judgment of the appeal on 15th December 2022 and failure to account on every day of the delay from 14th January 2023 to 18th January 2023. In the result, I dismiss the application with costs.

It is so ordered.




F.H. Mtulya

Judge

31.07.2023

This Ruling was pronounced in Chambers under the Seal of this court in the presence of the applicant's learned counsel, **Mr. Hassan Mawazo** and in the presence of the respondents, **Mr. Mwita Chacha Nyaheri** and **Mr. Samweli Mwita Chacha**.


F.H. Mtulya

Judge

31.07.2023