

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND CASE APPLICATION NO. 54 OF 2023

(Arising from Land Revision No. 2/2021 High Court of Tanzania at Bukoba, Originating from DLHT for Ngara in Application No. 4/2020)

SARAPHINA MWITA..... APPLICANT

VERSUS

JANE SAMWEL CHACHA (Suing as next friend of

Mkami Joseph and Mwita Joseph 1ST RESPONDENT

MWITA MARCO..... 2ND RESPONDENT

RULING

3rd and 10th November, 2023

BANZI, J.:

Pursuant to section 11 (1) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019], the applicant has filed this application seeking extension of time to file leave to appeal to the Court of Appeal in order to challenge the decision of this Court in Land Revision No. 2 of 2021, in which the proceedings of the District Land and Housing Tribunal for Ngara (the DLHT) in Application No. 4 of 2020 were quashed and the judgment, decree and orders emanating therefrom were set aside. The application is supported by

affidavit deponed by the applicant. Both respondents resisted the application by filing counter affidavits.

At the hearing, the applicant was represented by Mr. Diocres Pesha, learned counsel whereas, Mr. Projestus Mulokozi, learned counsel represented the first respondent, while the second respondent appeared in person, unrepresented via video link from High Court of Tanzania at Musoma Registry.

Mr. Pesha began his submission by praying to adopt the applicant's affidavit to form part of his submission. He further submitted that, after being dissatisfied with the outcome of the decision of this Court, the applicant filed notice of appeal to the Court of Appeal timely. Also, she filed application for leave vide Misc. Land Application No. 91 of 2022 timely which was later, struck out for being incompetent. Being a lay person, she was told by her advocate that, her application was withdrawn with leave to refile. However, she did not take action to refile the application promptly because she was in the process of delivery in which she faced complications during delivery. He emphasised that, the delay was due to sickness and negligence of applicant's advocates whom she complained against them to Tanganyika Law Society (TLS). He cited the case of **Wilson R. Kilanga v. Gregory Rubahindura**

and Others [2022] TZHC 14182 TanzLII and **Abdallah Juma Kambale v. Noradi Tiliko Mongelwa** [2023] TZCA 17730 TanzLII to support his arguments about sickness and negligence of advocate. It was also his contention that, there was illegality committed by this Court when it decided that, the DLHT had no jurisdiction to entertain the dispute before it. He urged this Court to exercise its discretion and grant extension of time so that, the applicant can pursue her right to appeal to the Court of Appeal.

In his reply, apart from adopting his counter affidavit, Mr. Mulokozi responded that, this application does not meet the criteria for granting extension of time because the applicant has failed to account for each day of the delay. He added that, despite the applicant's contention about her advocate withdrawing Application No. 91 of 2022 and failing to refile, she did not state when the said application was withdrawn and when she instructed her advocate to file the competent application. She did not even attach proof of payment to establish that, she had hired that advocate. Moreover, Mr. Mulokozi argued that, the complaint letter attached to the affidavit was written on 15th May, 2023 and the application was filed on 3rd July, 2023 which is more than one month from when she complained to TLS, but still, she failed to account for the delay from 15th May, 2023 to 3rd July,

2023. Concerning the issue of sickness, he responded that, sickness can be a reason for the delay but the applicant did not properly explain when she delivered. Also, she did not state the nature of complication which incapacitated her to follow up her matter. On the issue of illegality, he submitted that, the so-called illegality raised by counsel for the applicant was not explained in the affidavit, but rather, it is the submission from the bar. He therefore urged this Court to find that, the application at hand has no merit and should be dismissed with costs.

On his part, the second respondent conceded to the application and urged this Court to grant it.

In his rejoinder, Mr. Pesha argued that, failure to account for each day of the delay is not the only factor to be considered in extension of time because there is no hard and fast rule constituting sufficient cause, but it depends on reasons advanced by the applicant if they can move the court to exercise its discretion. According to him, between 15th May, 2023 and 3rd July, 2023, the applicant was not fully recovered from her sickness. Therefore, the applicant has advanced sufficient reasons for this court to exercise its discretion.

Having heard the submissions of learned counsel for both parties, the issue before this Court for determination is *whether the applicant has established sufficient cause to warrant this Court to grant extension of time.*

It is settled that, granting extension of time is the discretion of the court and before exercising such discretion, the applicant has to adduce reasons that the delay was due to sufficient cause. In **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT (unreported), it was stated that:

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily."

In the case at hand, looking at the affidavit, there are three grounds raised by the applicant as reasons for the delay, *i.e.*, sickness, negligence of the advocate and illegality. It was argued that, these are sufficient reasons to extend time. However, Mr. Mulokozi resisted those contentions on the reason that, there was no proof to that effect.

It is an established principle that, sickness may constitute sufficient cause justifying extension of time to file the appeal or application. In the case of **Emmanuel R. Maira v. The District Executive Director Bunda District Council** [2010] TZCA 87 TanzLII, the applicant applied for extension of time whereby he tendered a medical chit showing that, he was in Dar es Salaam from July, 2002 to March, 2003. The Court held that:

"Health matters, in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike."

In the matter at hand, the applicant in her affidavit did not explain when those delivery complications occurred and for how long she was incapacitated with those complications. Besides, unlike in the cited cases of **Wilson R. Kilanga** and **Emmanuel R. Maira**, in this matter, the applicant did not attach any medical chit to prove her assertion from being pregnant to delivery and the alleged complications. In absence of proof, she cannot rely on sickness as the ground for extension of time unless otherwise, she was treated traditionally, which is not the case here because it is not reflected in her affidavit.

Turning to the issue concerning negligence by her advocate, Mr. Pasha contended that, the hired advocate was negligent as he failed to act properly according to instructions. I have perused the documents attached with the affidavit. There is a complaint letter written by the applicant to TLS complaining against the advocates she hired to prosecute her case. Also, I had opportunity to peruse the record in respect of application for leave which was later struck out for being incompetent. It is very unfortunate that, her advocate did not take prompt action to rectify the error following his act of filing incompetent application. It was also in her affidavit and attached letter that, the second advocate did not take any action after being hired. Under these circumstances, the applicant cannot be penalized for inaction and negligence of her advocates. It is settled that, in some circumstances, time may be extended on the negligence of the advocate. In **Yusufu Same and Hawa Dada v. Hadija Yusufu**, Civil Appeal No. 1 of 2002, it was stated that:

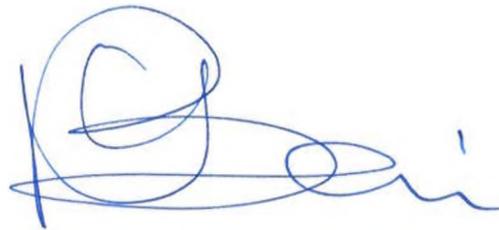
"Generally speaking, an error made by an advocate through negligence is not sufficient cause for extension of time... But there are times, depending on the overall circumstances surrounding the case, where extension of time may be granted even where there are some elements of negligence by the applicant's advocate... In the

circumstances, while accepting that there were some elements of negligence by her counsel...we hold that the learned counsel's negligence constituted sufficient reason for delaying in lodging the appeal..."

Coming to the issue of illegality, it was the contention of Mr. Pesha that, this Court erred to hold that the DLHT had no jurisdiction to entertain the dispute before it. Mr. Mulokozi on his side, argued that, illegality raised by Mr. Pesha was not deponed in the affidavit and therefore, a submission from the bar. I had opportunity of perusing the affidavit. It is apparent that, at paragraph 9, the applicant raised the issue of illegality though not in details. In my view, it was not wrong for learned counsel to clarifying the kind of illegality in his submission, considering that, jurisdiction being a point of law, it can be raised at any time. Be as it may, it is settled that, illegality is a sufficient reason for extension of time even where the applicant has not accounted for each day of the delay. In the case of **Arunaben Chagga Mistry v. Naushad Mohamed Hussein and Others** [2016] TZCA 2026 TanzLII it was stated that:

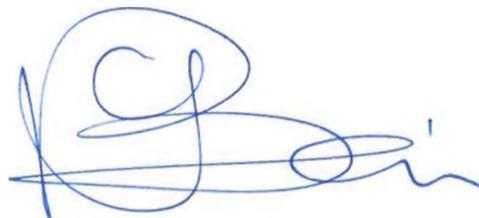
"When there is an allegation of illegality, it is important to give an opportunity to the party making such allegation to have the issue considered."

As the applicant asserts that there is illegality, I am of the view that, she deserves a chance for that issue to be determined in the upper authority. For those reasons, I am satisfied that, the applicant has advanced sufficient reasons for this Court to extend time for her to file the application for leave to appeal to the Court of Appeal. Therefore, I grant the application by giving the applicant 30 days from the date of this ruling to file her application for leave to appeal to the Court of Appeal. Owing to the nature of this matter, each party shall bear its own costs.



I. K. BANZI
JUDGE
10/11/2023

Delivered this 10th day of November, 2023 in the presence of the first respondent and in the absence of the applicant and the second respondent.



I. K. BANZI
JUDGE
10/11/2023