

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPLICATION

REFERENCE NO. 202402191000003161

(Originated from the Resident Magistrate's Court in Misc. Land Application No. 15 of 2023)

MUSSA JEREMIAH APPLICANT

VERSUS

ESTHER JEREMIAH (Administrator of the Estate

of the Late JEREMIAH KERENGE) RESPONDENT

RULING

19th & 22th February, 2024

M. L. KOMBA, J.:

The application at hand is for extension of time to lodge notice of appeal out of time against the decision of this Court before Hon. Marley (Extended Jurisdiction) in Misc Land Application No. 15 of 2023 arising from Misc Land Application No. 26 of 2023 HC at Musoma. The application is supported by an affidavit sworn by the applicant, **MUSSA JEREMIAH**. On the other side, respondent filed counter affidavit.

Derived from the affidavit filed by the applicant, a brief background of the matter read as follows; Misc Land Application No. 15 of 2023 was decided

in favour of the respondent and applicant had intention to file notice of appeal and before he lodged, his mother (Maua Makale Nyamungwa) fall sick and he, the applicant had to take care of her. The said Maua was transported to Muhimbili Orthopaedic Institute (MOI) for treatment and after treatment Maua and the applicant returned to Musoma. Following the arrival at Musoma, applicant consulted an advocate for legal service who informed of the filing notice of appeal. According to applicant, the extension of time is outmost just as Hon. Magistrate (Ext) made serious mistake as listed at paragraph 8.

During the hearing of the application, the applicant was represented by Mr. Amos Wilson while the respondent had a legal service of Mr. Ostak Mligo, both are learned advocates. The counsel for applicant was the first to address this court that, while praying for adoption of their affidavit he explains the reason for delay to file notice of appeal that; Applicant being the only son, he has to attend her sick mother who was treated in Musoma and later on in 28/07/2023 was transported to MOI for further treatment. Mr Wilson submitted further that applicant has to escort her mother due to her age (71 years) and type of sickness she undergoes. Applicant returned to Musoma on 14/10/2023 as per bus tickets and started the process of engaging an advocate to peruse his appeal only to find he is out of time.

Wherefore he was attending her sick mother and the sickness is among the reason to extend time.

Further, Mr. Wilson submitted that there is illegality in impugned judgment which is clearly on face of record which in judgment the Hon. Resident Magistrate (Ext) wrongly referred the provision of law which are 58 (1) and 59 (1) of Probate and Administrator of Estate Act. He said this section is applicable when caveat is based on appointment of administration of the estate while the matter was the act of Administrator to sale the property which he was administering. The house which was planned to be sold is located at plot No. 19 Uhuru Street and the application was filed under S. 78 (1) of Land Registration Act, Cap 334 RE 2019. He insisted the use of law made him to arrive in wrong decision. He supplied this court with decision of **Tryphone Elias @ Ryphone Elias vs Majaliwa Daudi Mayaya**, Civil Appeal No. 186/2017 that the court should not close eyes on illegality or irregularity.

Another illegality is when the trial court mention house in plot No. 34 Uhuru Street which was not supposed to be involved in case. Counsel believes the illegality mentioned is among the reason to move this court to grant this application.

Mr. Mligo on the other side prayed this court to adopt their affidavit and submitted that in the applicant's affidavit there is not illegality. In para 8 (iii) applicant deponed on misconception by the trial Magistrate on applicable laws which to his knowledge is not illegality. It was a court decision it cannot be said there is apprehension of law.

On the second illegality about houses he was of the submission that the affidavit of the applicant is silent on mixing of the houses in Plot No.19 and Plot No. 34 as seen in paragraph 8(ii). To him, using wrong law is not illegality and if at all trial Magistrate use different law that was supposed to be ground of appeal. From the contents of the applicant's affidavit Mr. Mligo submitted that this court will have a dubious task to look for illegality.

On the issue of sickness, counsel for respondent submitted that there is no proof that he applicant is the only son of the sick woman. Even though he is the only son he said does not permit him to ignore other limitation of law. He said in affidavit there is a hospital form which show patient was admitted on 18/09/2023 and was discharged 06/10/2023 contrary to what was submitted by applicant that they were on safari from August, 2023. The judgment was delivered on 26 July, 2023 as per paragraph 4 of applicant affidavit. There no explanation what applicant

was doing from 25/08/2023 to 18/09/2023 when the sick person was admitted. There are 24 days which the appellant has failed to account. Patient was discharged on 06/10/2023 and on 14/10/2023 he decided to come back to Musoma, there is a gap of 8 days. Further he submitted that from 14/10/2023 when applicant arrived at Musoma to 13/11/2023 when he filed application there is a gap, from his calculation counsel submitted that applicant failed to account more than 60 days bearing in mind that the person who was sick is not applicant and, under the law extension of time on the ground of sickness does not extend to caretaker.

Mr. Mligo referred this court to **Lyamuya Construction vs Board of Reg Trustee of Young Women Christ Association**, Civil Application No. 2 of 2010 where the court insisted on account for each day. He disputed the time spent in looking for an advocate to be not among the good cause to grant extension of time as was in **Philemon Mang'ehe t/a Bukine vs Gesso Herbon Bajuta**, Misc. Civil Application No. 374/02 of 2022 that financial hardship is not a good cause. He prayed this court to find there is no illegality as it was not revealed in affidavit and applicant failed to account each day of delay.

When given time to rejoin his submission Mr. Wilson said sufficient ground depend on circumstance of the case as there is no proper definition. Elaborating more from their affidavit, he said the applicant is the only son and the sick person was admitted 18/09/2024 but she was under treatment since 25/08/2023 and the applicant was attending her mother while in Dar es salaam. He further elaborated that from 06/10/2023 to 14/10/2023 the applicant was waiting her mother to recover and to be able to travel back to Musoma and from 14/10/2023 to 13/11/2023 there was problem in filing system and he was allowed to file out of system. He insisted that there are circumstances where accounting for each day is not applicable.

He further elaborated that illegality is featured in para 8 (iii) of their affidavit about apprehension of applicable law to the matter and insisted of inclusion of Plot No. 34 in the judgment was not right hence illegality and it should not be left unattended. Finally, he said so far as these parties are relatives, he prayed this court not to grant costs to any of them.

Having considered the application's records and the submission advanced by each party, the duty of this Court lies to consider whether or not this application is meritorious.

It is trite law that whenever any part seeks for extension of time to file an application or appeal out of time, he/she must advance the sufficient reason (s) that the court can consider it before granting the same.

As the matter of fact and as submitted by Mr. Wilson, there is no decisive definition of what a sufficient/good cause is, however, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice, if any that each party is likely to suffer and circumstances of the case. See **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam.

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 vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987 and second, accountability on every day of the delay (see:

Bushiri Hassan vs Latifa Lukio Mashayo, Civil Application No. 3 of 2007). Further, inordinate delay or negligence on part of applicants for enlargement of time is discouraged by our superior court (see: **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra). It was resolved so to avoid applicants who file their application as and when they so wish.

In the present application, the applicant has registered two relevant materials, namely: first, sickness of his mother and second, illegality in judgment. For the sickness to be ground must be the applicant who is sick and not caretaker, otherwise it is the wisdom of court. However, as submitted by Mr. Wilson, the applicant fails to account days in exclusion of those attending his mother. For instance, he failed to account from 14/10/2023 when he arrived in Musoma to 05/11/2023 before electronic Case Management System (eCMS) came into operation. Without taking much time I find there is no merit on counting days of delay.

Another material issue registered by the applicant is illegality on house situated at Plot 34. I find no elaboration on mixing of the houses rather deposition that it is not a family house. This cannot be said to be illegality.

At paragraph 8 (iii) that the trial Magistrate misconceived facts of the case and misapprehended applicable laws, Mr. Mligo was of the submission that it is a court decision and therefore it cannot be said there is apprehension of law. I have read the record and find the matter was filed under S. 78 (1) of Land Registration Act, Cap 334. There was a caveat entered under the cited law and the judgment cited different law, Probate and Administration of Estate Act, Cap 352 R E 2002. I find this is irregularity enough to move this court.

Having said so, I hold that the applicant has sufficiently registered good reason to be granted what he prayed. I hereby grant 14 days from the date of this ruling to lodge notice of appeal.

No order as to costs.

DATED at MUSOMA this 22th day of February, 2024.




M. L. KOMBA
Judge