

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 310 OF 2020
(Arising from the Application No.30 of 2015)

FATMA MOHAMED CHAMWENYEWE APPLICANT

VERSUS

SALUM MKOGA 1ST RESPONDENT

NYAMBUNDA VILLAGE COUNCIL 2ND RESPONDENT

RULING

Date of last Order: 05.08.2021

Date of Ruling: 10.09.2021

A.Z. MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 38 (1) of the Land Disputes Court Act Cap.216 [R.E 2019] and section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] to extend time within the applicant to lodge an appeal to this court against the decision of this District Land and Housing Tribunal

for Mkuranga in Application No. 30 of 2015 10th June, 2016. The application is supported by an affidavit and supplementary affidavit deponed by Fatma Mohamed Chamwenyewe, the applicant. The respondents resisted the application.

When the matter was called for hearing on 05th August, 2021, the applicant appeared in person whereas the respondent enjoyed the legal service of Mr. Alex Enock, learned counsel. By the court ordered and consent by the parties, the application was argued by way of written submissions whereas, the applicant submitted her application in chief on 17th August, 2021 and the respondent's Advocate filed his reply on 31st August, 2021. The applicant filed her rejoinder on 06th September, 2021.

In the written submissions in support of the appeal, the applicant stated that she seeks an extension of time to file an appeal to the Court of Appeal of Tanzania against the decision of the District Land and Housing Tribunal in Land Application No. 30 of 2015. The applicant raised two grounds of delay namely; sickness and financial hardship that faced her to lodge her appeal on time.

In strengthening the first ground of delay the applicant contended that the District Land and Housing Tribunal was delivered on 10th June, 2016

and the tribunal decided the matter in favor of the respondents. She stated that the copies of the Judgment and Decree were certified and ready for collection on 15th July, 2016, 7 days before the time limit of 45 days for appeal lapsed. The applicant said that she fell sick on 08th July, 2016, she had high blood pressure and was diabetic. To prove her submission, she referred this court to the appended copies of Judgments, Decree, and medical chit which pleaded on paragraphs 7, 8, and 12 of Applicant's affidavit, and the same is marked annexures "C" and "E".

The applicant continued to submit it is the position of the law that sickness of the party is sufficient cause for the party to be granted an extension of time. Fortifying her position she cited the case of **Emmanuel R. Maira v The District Executive Director**, Bunda District Council, Civil Application No. 66/2010 (unreported). Hon Kalgeya J. A (as he then was) had this to say:-

"Starting with treatment and medication, the medical chits relied upon bail out the applicant ... Health matters, in most cases, are of the choice of human beings; cannot be shelved and nor can anyone be held to blame when they strike."

With respect to the second ground for delay, the applicant complained that within the prescribed time she faced financial hardship thus, she was unable to secure legal services timely since she fall sick until August, 2017 when she was able to file the Application No. 864 of 2017 of which was struck out by Hon. D.A. De-Mello J, 26th June, 2010 for being incompetent. She submitted that her delay does not abuse the court process or contemptuous default. She added that the respondent will not be prejudiced once the extension is granted. To bolster her submission she cited the case of **Mobrama Gold Corporation Ltd v Minister for Energy & Minerals & Two Others** [1998], TLR 425.

On the strength of her submission, she beckoned upon this court to grant her application be granted.

Objecting to the application, in his written submission, Mr. Enock, the learned counsel for the respondent was equally strenuous in his opposition. Referring the respondent's counter-affidavit, the learned counsel submitted that the applicant's application should not be granted on the ground that she did not account for each and every day of delay. Mr. Enock referred this court to annexure "E" and stated that the same contains information of the applicant starting from July,

2019 to 17th March 2020. He went on to argue that the said medical chit does not reveal what prevented the applicant to file an appeal within time starting from July 2016 to 2019. He continued to lament that the applicant has not attached a letter to prove that she applied for a copy of Judgment and Decree to justify her claims that she obtained the copies late.

The learned counsel for the respondent continued to submit that that there is no proof that the applicant was not admitted to the hospital. He contended that the sickness is a good ground for the grant of extension of time but that the applicant was attending regular check-ups which could have not prevented him to contact the legal service provider for filing the appeal on time. The learned counsel threw his last jab by contending that the applicant's allegation is not true since she was attending other cases at the same District Land and Housing Tribunal.

Submitting on the second limb, the counsel for the respondent simply argued that the applicant had no any financial problem since she was represented by a legal aid organization. The learned counsel for the respondent insisted that there no technicality was established by the applicant which led to her delay to file an appeal.

In conclusion, that the respondent's Advocate argued the applicant's application has no legal remedy and the same should be dismissed.

In rejoinder, the applicant maintained her submission in chief. She stated that she attended other legal matters before 15th July, 2016. Stressing, the applicant complained that she had to attend a clinic to serve her life.

Having carefully considered the submissions made by the applicant and learned counsel for the respondent in their written submission and examined the affidavit and counter affidavit, the issue for determination is ***whether the applicant is meritorious.***

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter affidavit with relevant authorities. The position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo & Another v Shah** [1968] EALR 93.

It is trite law that the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

Additionally, the law requires the applicant to act equitably. See the Supreme Court of Kenya's decision in **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others**, Sup. Ct. Application 16 of 2014. This requirement got a broad explanation in the celebrated decision of the Court of Appeal in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, CAT-Civil Application No. 2 of 2010 (unreported), wherein key conditions on the grant of an application for extension of time were laid down. These are:-

- " (a) The applicant must account for all the period of delay.

- (b) The delay should not be inordinate.
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.
- (d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

The applicant's reliance on the quest for extension of time is based on her health condition. The law is to the effect that delays which arise as a result of pursuing matters which subsequently fall through on account of a wrong procedure are excusable. They are, as the applicant argued, the ground of sickness constitutes a sufficient cause for an extension of time. I have scrutinized the applicant's affidavit, specifically in paragraphs 7, 8, 9, 10, and 12. The application is granted was delivered on 10th June, 2016 and the Judgment and Decree copies in respect to Application No. 30 of 2015 were ready for collection, however, the applicant did not bother to write a letter, requesting for the said copies.

The annexure "E" which was tendered to prove the applicant's sickness appears to be a normal routine check-up and not a medical chit to prove that she was admitted to the hospital. Moreover, annexure E does not show if it was issued by the Hospital since the

same lacks the Hospital name and stamp. Therefore, one cannot rely on it to prove his/ her claims.

The applicant complained that her delay to file an appeal timely was caused by financial constraints. However, and with due respect, it is my view that financial constraint is not a sufficient ground for extension of time. The Court of Appeal of Tanzania in the case of **Wambele Mtimwa Shahame v Mohamed Hamis**, Civil Ref.No.8 of 2016 (unreported), where the Court of Appeal of Tanzania with approval cited the case of **Yusufu Same & Another v Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported). The Court of Appeal of Tanzania held that:-

“We are aware that financial constraint is not a sufficient ground for extension of time. See Zabitis Kawuka v Abdul Karim (EACA) Civil Appeal NoA8 of1937.”

Applying the above holding of the Court of Appeal of Tanzania in the instant application it is obvious that the applicant’s ground based on financial constraints cannot hold water.

Having unflinchingly reviewed the depositions in the affidavit and the submission made by both parties, I am convinced that this case is among of cases in which extension of time was not granted. For failure to account for each day of delay. Circumstances of this case reveal that there is no

sufficient cause capable of exercising the Court's discretion and extend the time within which to file an application for appeal.

Consequently, this Court declines to grant the applicant's application and proceeds to dismiss it without costs.

Order accordingly.

Dated at Dar es Salaam this date 10th September, 2021.




A.Z.MGEYEKWA

JUDGE

10.09.2021

Ruling delivered on 10th September, 2021 via audio teleconference, whereas the applicant and respondent were remotely present.




A.Z.MGEYEKWA

JUDGE

10.09.2021