

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**[IN THE DISTRICT REGISTRY]**  
**AT ARUSHA**

**LAND APPEAL NO. 9 OF 2019**

*(Originating decision of the District Land and Housing Tribunal for Karatu in  
Misc. Application No. 110 of 2018)*

**PASCHAL TAHHAN ..... APPELLANT**

***VERSUS***

**TSAFU KWASLEMA ..... RESPONDENT**

**JUDGMENT**

*23<sup>rd</sup> March & 17<sup>th</sup> May, 2021.*

**MZUNA, J.**

Paschal Tahhani (the appellant herein), has preferred this appeal against the decision of the District Land and Housing Tribunal for Karatu (the trial Tribunal), in Misc. Application No. 110 of 2018, which was delivered on 28/1/2019. In that ruling, the appellant was refused extension of time to file his appeal against the decision of Endamararieck Ward Tribunal (the Ward Tribunal), which was delivered on 22/4/2014. In its ruling, the trial Tribunal ruled that the appellant failed to adduce sufficient cause for the delay. The appellant was dissatisfied by that decision.

He has preferred this appeal on four grounds of appeal, however on careful perusal, all the four grounds can be boiled into a single ground, which faults the trial Tribunal's decision for failure to appreciate that the appellant adduced sufficient cause for the delay which warranted him the extension of time sought.

At the hearing of the appeal, both the appellant and the respondent appeared in court in person unrepresented, and fended for themselves. The appeal was argued

orally. The main issue for this Court's determination is whether the appellant adduced sufficient cause in the trial Tribunal to warrant him the extension of time sought.

In his submission, the appellant contended that the main reason for the delay in filing his appeal was due to the fact that he was sick, and that he attended different hospitals. That was also stated in paragraph 4 of his affidavit in support of the application in the trial Tribunal. In that paragraph he stated that he was admitted in different hospitals for further treatment. He annexed what he believes to be medical certificates as annexure A1. The appellant contended that he lodged this appeal because the trial Tribunal never considered his grounds of appeal. He added that he was sick that is why he failed to file the appeal in time. He also insisted that he has the medical chit with him, praying for his appeal to be allowed by setting aside the ruling of the trial Tribunal by extending him time to file his appeal. He also prayed for the costs of the suit and any other relief that this Court deems fit and just to grant.

Contesting the appeal, the respondent insisted that the appeal should be dismissed because the appellant failed to tender the medical chit after alleging that he was sick. He fortified that the judgment of the Ward Tribunal was delivered on 22/4/2014, the appellant never lodged his appeal in time. He maintained that the decision of the trial Tribunal was delivered on 28/1/2019. By then the appellant had not tendered the medical chit. He maintained his prayer that the appeal should be dismissed.

In a short rejoinder, the appellant insisted that the medical chit was not received in the trial Tribunal while he had with him the x-ray. He reiterated that he was not given his rights that is why he lodged the appeal. According to the appellant,

the respondent never attended at the Ward Tribunal, therefore his appeal should be allowed.

*The question is, did the appellant adduce sufficient cause in the trial Tribunal to warrant him the extension of time sought?*

In applications for extension of time, it is the discretion of the Court to grant or not. However, such discretion has to be exercised judiciously, and other factors must be taken into account. The Court of Appeal decision in **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) when the Court of Appeal quoted with authority the decision of the defunct Court of Appeal for Eastern Africa in the case of **Mbogo Versus. Shah** [1968] EA which held thus:

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."*

This position has been followed in a number of cases, including the Court of Appeal decisions in **Benedict Mumello Vs. the Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) and **Maneno Mengi Limited and 3 Others Vs. Farida Said Nyamachumbe and Registrar of Companies** [2004] TLR 391.

The impugned ruling was preferred in relation to the application filed under section 20 (2) of the Land Disputes Courts Act, Cap 216 RE 2002. The question is, are there "good and sufficient cause" which the appellant demonstrated in his application before the trial Tribunal? Looking at the annexed documents, the first document relied upon by the appellant is a letter from Endabash Health Center, dated 21/9/2015, which purports to refer the appellant to Karatu District Hospital. In that letter, it was alleged

that the appellant had chest problems. The second document appended was a letter from Endamarariiek hamlet chairman, referring the appellant to Endabash Health Center. In that letter, there was also an endorsement by the Officer In-charge Endabash Health Center that the appellant was referred to Karatu Lutheran Center for chest ex-ray. There is no any other document suggesting that the appellant was sick or even admitted in any hospital as contended. Similarly, his allegation that he had medical chit with him at the hearing of his application is unsubstantiated because it was never annexed in his application in the trial Tribunal. That reason cannot be regarded as ground for extending time, since the advanced reason of illness is unsubstantiated.

The court is more minded with the cause inhibiting one to attend court on the date fixed for hearing, more so where a party is admitted in hospital. I am fortified to this view by the decision of the Court of Appeal in **Juto Aliy Vs. Lucas Komba & Another**, Civil Application No. 484/17 of 2019 (unreported), where it stated:

*"Indeed, she has also not explained how her illness contributed to the delay as the medical evidence she attached to her affidavit concerns the period specifically for the dates when she attended to hospital on 8<sup>th</sup> October, 2016 and 19<sup>th</sup> June, 2016. Besides, **there is no indication that on particular dates she was admitted and for how long**. The only indication is that she attended at Mwananyamala Hospital as an outpatient where she was attended and allowed to go to her residence on both occasions."*(Emphasis added)

The record shows that the decision of the Ward Tribunal was delivered on 22/4/2014. The only evidence available proving that the appellant was sick is that of 30/6/2015 and 21/9/2015 as shown in annexure A1. Even in his affidavit, there is no detailed reasons on the rest of the days. Application No. 110 of 2018 was filed in the

trial Tribunal on 12/11/2018. The period between 2015 and 2018, when the application was filed is not accounted for. Delay of even a single day has to be accounted for. At this stance, I am guided by the Court of Appeal decision in the case of **Addija Ramadhani (Binti Pazi) Vs. Sylivester W. Mkama**, Civil Application No. 13/17/2018 (unreported), in which the Court stated:

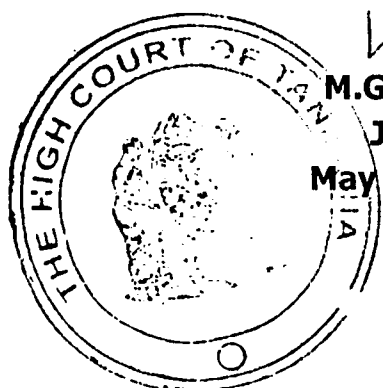
*"In the instant case I respectfully agree with Mr. Mafuru that the delay is inordinate and the applicant has not gone anywhere close to accounting for each day of the delay."*

From the above exposition, the delay is an inordinate. There is no any evidence suggesting that the appellant was diligent in prosecuting his appeal. The record shows that on 2/6/2014 the appellant had filed petition of appeal in the trial Tribunal, but ~~there is no explanation as to what transpired. The appellant was sloppy, he was negligent in pursuing his right.~~

For the above reasons, the trial Tribunal's decision was justified. The appellant as rightly stated by the Tribunal Chairman failed to adduce sufficient cause for the delay. Neither his application nor this appeal can be condoned. In the event, the appeal lacks merit for failure of the appellant to adduce sufficient cause for the delay.

Appeal stands dismissed with costs both in this court and in the trial Tribunal.

Order accordingly.

 **M.G. MZUNA,**  
**JUDGE.**  
**May 17<sup>th</sup>, 2021**