

TANZANIA / JUDGMENT

SEVELINA CHAWE pdf

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA AT
MBEYA MISC. LAND APPLICATION NO. 23 OF 2023 (Originating from the decision of the District
Land and Housing Tribunal for Mbeya in Land Application No. 33 of 2018) SEVELINA
CHAWE..... APPLICANT VERSUS KANISIA
MWINUKA..... RESPONDENT

RULING

27th August & 26th September 2024 TIGANGA, J By an application made under section 41(2) of the Land Disputes Court Act Cap 216 Revised Edition 2019 (LDCA), and a sworn affidavit by the applicant, the applicant seeks the following orders:

1. That, this Court be pleased to grant an order of extension of time to enable the applicant to file an appeal out of time against the decision of the District Land and Housing Tribunal for Mbeya in Land Application No.33 of 2018
2. Costs of this application to be provided for,
3. Any other reliefs (s) this Court deems for and just to grant. i By way of written submissions, Mr. Maulid Muganyizi Ibrahim, learned advocate for the applicant, submitted that the applicant moved this Honourable Court under section 41(2) of the LDCA to seek the Court's leave to extend the time within which the applicant may lodge her appeal out of time. He prayed that the Court also adopt the contents of the affidavit sworn by the applicant as part of this submission. He argued that, according to the established legal principles and various precedents, an application for an extension of time to file an appeal must demonstrate sufficient or good cause before it is granted. He submitted that courts have further held that what constitutes good cause is a question of fact, dependent on the specifics of each case; thus, many varied circumstances could constitute good cause in any case. To support his argument, he relied on the case of Yusuph Same and Hawa Dada vs Hadija Yusuph, Civil Appeal No. 1 of 2002 CAT (Unreported). The Court observed that an application for an extension of time is entirely at the discretion of the Court to grant or refuse. This discretion, however, must be exercised judiciously, with the overriding consideration being that there must be sufficient cause for so doing. He averred that the applicant has two reasons to convince this Court to extend the time, the reasons set out in paragraph 7 of the applicant's 2

affidavit are; first, sickness, and second, time spent prosecuting Miscellaneous Land Application No. 51/2022. He further averred that various cases have established sickness that is beyond human control, as a sufficient cause for extension of time. In this case, the impugned decision was pronounced on 11th July 2018, that, led to the applicant becoming ill and starting treatment at Chimala Mission Hospital. Subsequently, early in 2020, after the applicant had regained some relief, she applied for revision vide Miscellaneous Application No. 133/2020. That was decided by the ruling in favour of the respondent that was pronounced on 21st September 2021. From that time, the applicant became ill again, and up until 2022, when she got relief and applied for extension of time vide Miscellaneous Application No. 55/2022 which was dismissed by this Court on 6th April 2023. He informed the Court that the applicant has attached medical treatment documents to prove the sickness and to demonstrate that, due to this illness, the applicant could not prosecute the appeal promptly. He continued stating that the applicant was paralysed, which further impeded the timely filing and prosecution of the appeal as required by law. To support his submission, he cited the cases of Pastory J. Bunonga vs Pius Tofiri, Miscellaneous Land Application No. 12 of 2019 HC, Richard 3 Mipawa Marara vs Finca Tanzania Ltd & Another, Land Appeal No. 51 of 2021 HC, Ally Said Mzumba vs Mwajuma Stamili, Misc. Civil Application No. 65 of 2021 HC, and Emmanuel R. Maira vs The District Executive Director Bunda District Council, Civil Application No. 66 of 2010 HC (all Unreported). He asserted that, apart from the applicant's illness, when she did regain relief, she was occupied with prosecuting this case within the corridors of this Honourable Court, as demonstrated in the affidavit. He further asserted that the law is now settled that a delay in taking action within the time specified by law, caused by the time spent prosecuting a matter, is considered a technical delay and constitutes good cause for extension of time. He referred to the case of Rosemary Katunzi vs Oscar Mhagama and Another, Civil Application No. 43/17 of 2022 CAT (Unreported). In conclusion, he requested that the Court grant the application as prayed. In reply to the applicant's submission, Ms Kanisia Mwinuka, who did not have any legal representation, submitted at the outset that the application lacks merit and is untenable for lack of substance. She argued that for applications of this nature to succeed, the applicant must demonstrate good cause for the delay. This Court is vested with the power to grant an extension of time to file an appeal out of time only upon the presentation of a good reason for the delay; the discretion to grant an extension of time must be exercised judiciously, rather than based on personal whims, sympathy, or sentiment. Ms Mwinuka further submitted that the applicant raised two major grounds for the delay; first, sickness, and second, technical delay. Addressing the sickness claim, she contended that the applicant's assertion of falling ill since 11th July 2018 and filing an application for revision in early 2020 does not prove the alleged illness. The applicant failed to provide evidence demonstrating that she was indeed sick and reasonably prevented from taking the necessary steps of filing an appeal within the prescribed time. She argued further that sickness must be proved by medical evidence, and the applicant has not shown how the illness impeded the timely filing of the appeal. The purported document attached to the applicant's affidavit indicates that the applicant attended Chimala Mission Hospital for treatment only on 28th July 2020, which

means for the rest of the time her sickness has not been supported by any evidence. To support her submission, she cited the case of Maro Wambura vs Chacha Nyamahemba, Miscellaneous Land Application No. 25 of 5 2021, HC Musoma (unreported), where the Court held that an outpatient card alone is insufficient to prove that the applicant attended the hospital. The document should have been accompanied by medical documentation from the doctor or hospital. Furthermore, the applicant failed to show when she attended the hospital when she was advised to stay at home, and when she returned to the hospital to account for the delay. The absence of medical reports or documents in the affidavit renders the sickness claim unsubstantiated. Concerning the technical delay, she argued that the applicant failed to prove this ground, as the impugned judgment was delivered on 11th July 2018, and the first application for an extension of time was only filed in 2020. The applicant has not accounted for the period between 11th July 2018, when the District Land and Housing Tribunal for Mbeya delivered the judgment in Land Application No. 33 of 2018, and 2020 when Miscellaneous Land Application No. 133 of 2020 was filed. The case of Rosemary Katunzi (supra) does not apply to this application because the applicant did not account for the period from the delivery of the impugned judgment to the filing of the first application for an extension of time. 6 Therefore, she prayed that this Honourable Court dismiss the application for lack of sufficient reasons for an extension of time, and she requested that costs be awarded to the respondent. I do appreciate the submissions made by the parties. It is trite law that the Court can grant an extension of time upon good cause being shown. What constitutes good cause cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion to extend the time limited by the rules. Sgee Ratma vs Cumarasamy and Another (1964) 3 All ER 933. In this present case, the applicant seeks an extension of time to appeal against the decision of the District Land and Housing Tribunal dated 1st July 2018. In her affidavit, she claims to have been pursuing an another application for extension of time to lodge a revision against the said decision without success. Moreover, according to paragraph 7 of the affidavit, she claims that it is the sickness that prevented her from filing an appeal since 2018, as she was paralysed and was advised to stay at home and continue with body therapy treatment. She even attached 7 medical chits and a letter from the doctor dated 25th April 2023 as annexure SC5. Now, the question is: does the narration above suffice to meet the term "good cause"? I hold firmly that it does not because I see no valid reason to extend time. She argued that she was paralysed in 2018 and was advised to stay home, yet she was busy in court corridors twice applying for an extension of time to file a revision. She failed to justify how, if she was truly at home since 2018, she attended Civil Application No. 133 of 2020, which was struck out on 21st September 2021. She also filed another case, Land Application No. 51 of 2022, which was dismissed on 6th April 2023. Furthermore, the letter from the doctor does not state that she was sick from 2018; rather, it states that she is not supposed to be experiencing stress and attending those cases, which may lead her to high blood pressure, stroke, or even death. Further, it has not been said with proof that what prevented her is no longer there to prevent her to file and prosecute this application. Upon

those circumstances, I am of the view that the applicant has failed to show good cause for this Court to extend the time as the delay is inordinate for this Court to exercise its discretion. In the fine, the application is dismissed with no order as to costs. 8 Order accordingly. DATED and delivered at MBEYA this 26th of September, 2024. J.C. TIGANGA JUDGE 9

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