

TANZANIA / JUDGMENT

SILO LANTA

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA SUB REGISTRY AT ARUSHA MISC. LAND APPLICATION NO. 147 OF 2023 (C/F Misc. Land Application No. 21 of the High Court of the United Republic of Tanzania in Sub Registry of Arusha at Arusha, Originated from Land Application No. 101 of 2017 in the District Land and Housing Tribunal of Karatu at Karatu) BETWEEN SILO LANTA..... APPLICANT
VERSUS CULTURAL HERITAGE COMPANY LIMITED..... RESPONDENT

RULING

05/09/2024 & 20/09/2024 MWENDA, J.: The applicant, SILO LANTA, moved this Court under section 11 of the Appellate Jurisdiction Act, Cap. 141 (R.E.2019) seeking for the following orders: -

1. That the Honourable Court be pleased to grant the applicant an order for extension of time to file Notice of Appeal out of time to enable the Applicant to Appeal to the Court of Appeal.
2. That, costs of his application to be provided. 11 V other relief (s) that the Honourable Court will deem just and fit to grant. e said application was supported by an affidavit sworn by the applicant himself and resisted by a counter affidavit sworn by Mr. Reginald Moshi, Officer from the respondent's office. In his affidavit, the applicant deposed that when the judgment of the High Court was delivered on 25th day of August 2024 he instructed his advocate one Mr. PATRICK MALIGANA to prepare and lodge the Appeal to the Court of Appeal together with all necessary documents but on 27th November 2023 he realized the same to be not undertaken as he was sick and dealing with his family matters. According to him, his delay was not due to negligence. When this matter came up for hearing before this Court, the applicant was represented by Mr. LECTON NGESEYAN who was holding brief for MS. MARIAN KAMSULI, learned counsel with instructions to proceed. On the other hand, the respondent was represented by MS. ANNA OMBAY learned counsel. The hearing proceeded orally. Submitting in support of this application, Mr. NGESEYAN stated that apart from the reasons adduced in the affidavit deposed by the applicant, the reasons for delay to lodge appeal was due to sickness of the learned 2|Pa ■ounsei who ^as • nS FUCted by the applicant to prepare appeal papers. In point, Mr. NGESEYAN referred this court to an affidavit 6 same which was sworn by the said advocate one Mr. PATRICK MMIGANA. Regarding the legal back up Mr. NGESEYAN cited the case of CHRISTOPHER MTIKILA V. JACOB NKOMOLA & 3 OTHERS, Civil Case No. 278of 1977 (JiC-Arusha). In the end he prayed for the application to

be granted. Opposing the submission in support of the application, Ms. OMBAY firstly prayed the counter affidavit to be adopted to form part of her oral submission. She further submitted that the reasons for delay as stated by the learned counsel for the applicant are insufficient and lacks concrete evidence. According to her, the applicant was negligent for failure to lodge his appeal timely and to also make a follow up on the matter. The learned counsel had it that the allegation of sickness as being the reason for the delay is unfounded as there is no medical report in support of the same. To support her argument, she cited the case of ESTHER MALINGA V. ESTHER LOH AY, MISO. CIVIL APPLICATION NO. 22 OF 2022 and, in conclusion she prayed the present application to be dismissed. In a brief rejoinder Mr. NGESEYAN said that the learned counsel who was instructed but failed to file an appeal in time is of old age and there was 3|Page sclose the type of decease he was suffering from in the affidavit. The learned counsel believed each case must be decided on its own facts and although not everybody who fall sick can go to the P He concluded his rejoinder by maintaining his prayer to have this application granted. Having heard the rival submission from the counsel of the parties, this court will now determine the merit of the application. It is a trite law that in considering whether to grant extension of time or not, the applicant must show good cause. Several authorities have adumbrated factors to be considered in determining whether to grant or refuse extension of time. In the case of LYAMUYA CONSTRUCTION COMPANY LIMITED V. THE BOARD OF TRUSTEES OF YOUNG WOMAN CHRISTIAN ASSOCIATION OF TANZANIA, Civil Application no. 02 of 2010 the court held inter alia that:

- i) To account every day or today ii) To prove to the court that, the delay is not ordinate. iii) To show diligence not apathy and negligence in the prosecution of the action he intends to make. In the present application, the applicant blames it to the sickness of the advocate who was instructed to prepare an appeal as the source of delay. It is aware that sickness is a good ground for extension of time as it was stated in several authorities. In the case of GRAMTECH (T) COMPANY LIMITED V. DIAMOND TRUST BANK TANZANIA LIMITED AND FOUR OTHERS, Civil Application no. 447 of 2016 which cited with the approval the case of JUTO ALLY V. LUCAS KOMBA & ANOTHER, Civil Application No. 484/17 of 2017(Unreported) it was observed that: "At the outset I agree with Mr Nguleema that sickness .a serve a sufficient ground for the court to enlarge time. However, there must be medical report to prove the sickness as it has been explained how the alleged illness contributed the delay". The takeaway from the above authority is that any person intending to rely on sickness as a reason for extension of time must submit medical report or concrete evidence to prove that he was sick. In this matter, there is no evidence that the said advocate was sick thus, what was raised by learned counsel for the applicant is a mere submission from the bar which should not be accorded any weight as I hereby do. Further to that, as it was rightly submitted by the learned counsel for the respondent, having instructed an advocate to prepare and lodge an appeal, the applicant ought to have made some follow ups of the matter in check of 5\p 3 Failure to do so bars him from complaining afterwards. This position was stated in LIM HAN YUNG & ANOTHER VS LUCY TRESEAS KRISTENSEN (Civil

Appeal 219 of 2019) [2022] TZCA 400 (28 June 2022) (Tanzlii) where the court held inter alia that: "The appellant cannot throw the whole blame on their advocates. We think that a party to the case who engages the services of an advocate, his duty to closely follow up the progress and states of his case. A party who dumps his case to an advocate and does not make any follow ups of his case, cannot be heard complaining that he did not know and was not informed by his advocate the progress and states of his case." For the above reasons, the applicant has failed to adduce the evidence supporting the argument that the advocate who was instructed to process the appeal, one Mr. MALIGANA was sick. Regarding the argument that the said Advocate is of old age thus incapable to perform his official duty properly, I took judicial notice only to find this reason unfounded because the said Advocate is ably practising and is of good health whom, on several occasions happened to appear before me. 6 | Page that note, the applicant failed to account for his delay for almost 70 days thus, this application is unmerited and is hereby dismissed with costs. Ordered Accordingly. DATED at ARUSHA this 20th day of September, 2024.

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