

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**LAND DIVISION**

**MISC.LAND APPLICATION NO 43 OF 2020**

*(C/F Misc. Application No. 45/2018, Civil Appeal No. 7/2017 of the Court of Appeal of Tanzania at Arusha, Misc. Land Appeal No. 3/2011, High Court of Tanzania at Moshi, Land Appeal No. 13/2009 District land and Housing Tribunal of Kilimanjaro, original Appeal No.68/2009 Hai ward Tribunal)*

**SIMBO EBEN MBASHA.....APPLICANT**

**VERSUS**

**JOSEPH MARTIN MREMA@ REMMY FIDELIS TEMBA.....RESPONDENT**

***Date : 17/11/2020 & 30/11/2020***

**RULING**

The applicant Simbo Eben Mbasha, is seeking for extension of time within which to file out of time written submission in chief in **Misc. Application No. 45/2018** between the parties herein. The Application is made under section 14 (1) of the Law of Limitation Act, Cap 89 [R.E 2002] and is supported by applicant's sworn affidavit. The respondent disputed the application and filed counter affidavit to that effect.



The brief facts leading up to this application is to the effect that, on 27<sup>th</sup> November 2019 when **Misc. Application No. 45/2018** was set for hearing, parties consented the Application be disposed of by way of filing written submissions. The filing schedule was set for the applicant to file written submission in chief on or before 02/03/2020; reply on the submission made, on or before 16/03/2020; rejoinder if any on 23/03/2020; and the matter was set for mention on 23/3/2020. On 19<sup>th</sup> May 2020 parties made appearance and the applicant admitted failure to comply with the previous court order for the reason that he was attending to a sick relative. The Applicant prayed for extension of time to file the submission. Respondent conceded to a prayer. However he prayed for the applicant to lodge a formal application as required by the law, and the court so ordered for the same to be filed within 14 days. The next court appearance was scheduled for 2<sup>nd</sup> June 2020 and the court observed that some documents had been filed by the applicant thus the respondent was ordered to file reply submission on or before 16<sup>th</sup> June 2020 and the matter was set for mention on 2<sup>nd</sup> July 2020.

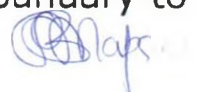
On the date of mention the Respondent submitted on his failure to file reply submission after he had discovered that the applicant had submitted a letter titled "**submission in chief**" instead of filing a

formal application and the court had to give the last order for the applicant to file formal application which he complied with and the respondent disputed by filing counter affidavit.

On the date when the application was set for hearing the applicant appeared in person unrepresented while the respondent had the services of Mr. Ralph Njau, learned advocate and the application was argued orally.

In his brief submission in support of the application the applicant apologized for the delay in submitting reply submission due to the reasons which he had explained in his affidavit to the effect that the delay was occasioned by sickness of a relative whom he was taking care. He finally prayed for the court to allow his application.

Responding against the application Mr. Njau submitted that for an application for extension of time to be granted, the applicant has to establish sufficient cause for the delay and furthermore, each day of delay has to be accounted for. Mr. Njau contended further that, the applicant had failed to show reasonable cause hence failure to comply with court orders as a result of applicant's negligence. Mr. Njau went on explaining the fact that, applicant's sworn affidavit was supported by bus tickets to the effect that the applicant did travel from Moshi to Dar-Es-Salaam from January to

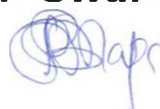


March 2020. However, the applicant failed to account for each day of delay. He finally prayed for the application to be dismissed with costs.

Rejoining, the applicant had nothing useful to add, save to maintain the fact that, he had to travel to Dar-Es-Salaam to attend to a sick relative and further that, he was to donate kidney to the sick relative thus he also had to undergo medical treatment. He finally prayed for mercy and sympathy of the Court.

Having considered both parties arguments, the question is whether sufficient cause has been demonstrated by the applicant to warrant exercise of discretion of this court to grant extension of time?

It is settled principle of law as enunciated in numerous court's decision that an application for extension of time is entirely upon the discretion of the court to grant it or not. More so, in granting extension of time the court not only consider if there are sufficient reasons for the delay but also the reasons have to be sufficient enough. This position has been fortified in the case of **R.V. Yona Kaponda & 9 others [1985] T.L.R 84** and reiterated in numerous decisions of the Court including **Benedict Mumello V. Bank of Tanzania, E. A.I.R [2006], Eliakim Swai** and



**Another V. Thobias Karawa Shoo Civil Application No. 2 of 2016 (CAT) at Arusha. (Unreported).**

It is pertinent to mention the fact that the decision in the case of **Lyamuya Construction Co. Ltd. V. Registered Trustees of YWCA of Tanzania**, Civil Application No. 2 of 2010, CAT (Unreported) has set principles in determining good cause for granting extension of time among others; the applicant has to account for all period of delay; the delay should not be inordinate; the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take.

Turning to the instant matter, the main reason for the delay as averred by the applicant is the fact that the applicant had travelled to Dar-Es-Salaam to attend to a sick relative and he even attached copies of bus tickets dated 03/01/2020 (Moshi – Dar) and 19/03/2020 (Dar to Moshi) respectively. However, the applicant has failed to account for each day of delay from 2/03/2020 when he was ordered to file the written submission in chief until 23/03/2020 (22 days) when the matter was set for mention.

In support of his argument to the effect fact that while in Dar-Es-Salaam he had to undergo kidney treatment for purposes of donating one of his kidneys to the sick relative, the applicant did





attach to his sworn affidavit his medical report ( as prospective donor) titled "**Clinical Notes**" from Muhimbili National Hospital. However, my perusal of the same has revealed the fact that, the said report was issued on 25/04/2017 (three years back) and does not relate in any way to the present period of delay.

In the circumstance, it is plain clear the fact that, the applicant has failed to account for each day of delay as illustrated in the decision of the case of **Bushiri Hassan V. Latifa Lukio Mathayo, Civil Application No. 3 of 2017** where the Court had this to say;


*".....Delay of even a single day has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken"*

For the reasons discussed above, I am satisfied that the applicant has failed to demonstrate sufficient reasons for the delay. Accordingly, I dismiss the application and I give no order as to costs.

It is so ordered.

Dated and delivered at Moshi this 30<sup>th</sup> day of November, 2020.



  
**S. B. MKAPA**  
**JUDGE**  
**30/11/2020**