

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA

MISC. LAND APPLICATION NO. 17 OF 2020

*(Arising from Land Application No. 02/2010 at High Court of Tanzania
Mtwara Registry)*

BAKARI RASHIDI KAUNDA..... APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK PLC1ST RESPONDENT

YONO AUCTION MART & COURT BROKERS2ND RESPONDENT

FRANK LANJONI MWALONGO3RD RESPONDENT

SHAIBU HAKIM CHILINDIMA 4TH RESPONDENT

RULING

Hearing date on: 25/2/2021

Ruling date on: 16/4/2021

NGWEMBE, J:

The applicant Bakari Rashidi Kaunda for the second time is in this court seeking extension of time within which to apply for leave to appeal to the Court of Court. The first extension of time of fourteen (14) days was granted by Judge W.P. Dyansobera on 12th December, 2019. However, for reasons best known to the applicant, failed to utilize those days until they expired. Mathematically, fourteen (14) days extension ended up on 26th December, 2019. Being so delayed, on 17th July, 2020 came again in this

court applying for extension of time to file an application for leave to appeal against this court's judgement in Land Case No. 2 of 2010, delivered by Judge Mzuna on 20th November, 2015. Since then to date, the applicant is in these courts' corridors seeking for justice to exercise his rights to appeal to the Court of Appeal.

According to his affidavit, the applicant in paragraph 7 raised the reason of sickness, which impeded him to utilize the extension of time granted by this court on 12th December, 2019. To enhance his ground of sickness, he attached sick sheet No. 01 -03 – 89/2020 of 25th January, 2020 issued by Temeke Regional Referral Hospital to outpatient.

However, in the cause of pleadings, the application is encountered by an affidavit in opposition from the 1st Respondent, while other respondents did not file any document opposing or supporting the application. As such, on 25th February, 2021, this court ordered parties to address this court by way of written submissions. In turn the applicant and first respondent complied with the scheduling order. Despite other respondents' failing to file counter affidavit, yet the 4th respondent ventured to prepare and file in court his written submission.

From the outset, I think I must refuse to consider the 4th respondent's written submission for the reasons that; first, the right to appear and argue on any suit/action, including an application of this nature, is by way of pleadings. Had the 4th respondent intended to oppose this application, he was duty bound to file counter affidavit to form part of his pleadings. Otherwise, he cannot be heard while he has no locus to appear and be



heard on this application. Second, being silent on a matter which affects your interest implies that he consented or accepted the application for extension of time. In turn, the only respondent who opposed this application is the 1st respondent. Thus having *locus standi* to appear and oppose the application. In conclusion, the Court of Appeal in the case of **Fatma Idha Salum Vs. Khalifa Hamis Said, Civil Appeal No. 28 of 2002** held:-

"It is now settled law that the only way to raise issue before the court for consideration and determination is through pleading and as far as we are aware off, this is the only way"

I would therefore, safely conclude that, the only respondent clothed with all rights to appear in this court and be heard, is the 1st respondent. Irrespective of the 4th respondent filing his written submission, I cannot as I have already said, consider it for the reasons so provided.

Notably, the applicant in his written submission, has advanced reasons centered on sickness as discussed above. Further, justified by citing quite relevant precedents, including the case of **Registered Trustees of Khoja Inthnasheri Jamat and 12 others Vs. Salum Juma Jussa & Yusuf Mohamed Nanji, civil Application No. 44 of 2017**, whereby the Court of Appeal considered what constituted sufficient cause. That the applicant must place before the court material, which will move the court to exercise its judicial discretion in order to extend time limitation.



More so, he cited the case of **Abdallah Zarafi Vs. Mohamed Omari [1999] H.C. 191** where illness was considered as factor for extension of time.

In the contrary, the 1st respondent strongly, opposed the application for extension of time by equally, citing good precedents including the famous case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010**, where the Court held:-

"As matter of general principle, it is the discretion of the court to grant extension of time. But that, discretion is judicial, and so it must be exercised according to the rules of reason and justice and not to private opinion or arbitrarily"


Also cited the case of **Bushiri Hassan Vs. Latifa Lukio, Civil Application No. 3 of 2007**. Thus, concluded by a prayer to dismiss this application for lack of diligence of the applicant and for lack of sufficient reasons.

Having summarized the arguments advanced by the parties, yet I am well aware on what constitutes good cause or sufficient reason to move the court to exercise its discretionary powers to grant or refuse to grant extension of time. **Black's Law Dictionary** (8th Edition) defined good cause to mean *"legally sufficient reason"* The applicant, therefore, must disclose good cause or sufficient reason for delay, even if, it is a single day, such delay must be counted for.



Moreover, I am also aware that extension of time is court's discretionary powers. However, such discretion is not a universal right or unchallenged upon filing such application. Legally such discretion is always exercised judiciously. Failure of which may equally be challenged as per the case of **Esso (T) LTD Vs. Deusdedit Rwebandiza Kayage [1990] TLR 102** where the Court of Appeal itemized several grounds upon which, the discretionally powers of this court may be challenged. Though the list is not exhaustive, the following are some of them:-

1. Misinterpretation or misappropriation of the applicable law or statute;
2. Ultra vires exercise of powers;
3. Non formation of the opinion in the exercise of such discretionary powers;
4. Absence of reasonable decision between the facts and circumstances taken into account in forming the opinion;
5. Consideration of extraneous matters or non-consideration of relevant materials in decision making;
6. Arbitrary exercise of powers; and
7. Malafide use of powers, use of powers for a purpose other than one or which the power is conferred.

The effect of these limiting factors is to subject the applicant to provide strong reasons or sufficient grounds for delay, even if is for a single day to convince the conscience of the trial judge to invoke his discretionary powers to extend time. 

This court is always conscious and indeed jealousy to exercise its discretion to extend time in the absence of any reasonable ground, which hindered the applicant to appeal within the provided statutory time frame.

Considering all those legal positions, the question now is how do they apply in the circumstance of this application? Inquisitively, the only reason advanced by the applicant, which prohibited him to utilize the 14 days extended period by this court, is sickness. As I have narrated before, the sick sheet attached in his affidavit was for outpatient dated 25th January, 2020, while the extension of time of 14 days expired on 26th December, 2019. It means, sickness of 25th January, 2020 had nothing to do with the extended time of 14 days. In other words, if at all he was sick, it means he became sick after expiry of the extended time of 14 days.

Even if, I would take that reason fancifully, which I am not prepared for, yet this second application for extension time was filed in this court on 17th July, 2020. Unfortunate there is no explanation on what happened for all that time up to 17/7/2020.

Always parties must serious cognizance that time is a material point in quick disposition of any suit. Anyone, who comes in court as he so wish will always meet with merciless sword which cut across, that is time limitation. In the cases of **Night Support (T) LTD Vs. Benedict Komba Revision No. 254 of 2008** and **Tanzania Fish Processes Vs. Christopher, Civil Appeal No. 161 of 1999 (CAT)**, the Court of Appeal held:-



"Limitation is material point in the speedily administration of justice. Limitation is there to ensure that a party does not come to court as when he chooses".

In the same vein, it was repeated in the case of **Dr. Ally Shabhay Vs. Tanga Bohora Jamaat [1997] TLR 305 at 306**, where they held:-

"Those who come to court of law must show unnecessary delay in doing so; they must show great diligence"

Judge Kalegeya (as he then was), in the case of **Mathew Martin Vs. Kahama Mining Corporation, Civil Case No 79 of 2006** when was discussing the effect of time limitation held:-

"However, unfortunate it may be for the plaintiff, the Law of Limitation on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web".

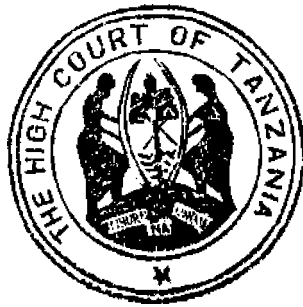
In the absence of sufficient reasons, the applicant is only interpreted to mean he is play with delaying tactics, for whose benefits? He is in better position to know it. Usually, disputes of any nature, must be decided as early as possible not only for the interest of the parties but also for the interest of the general public. The Latin Maxim on public interest is called "*rei publicae ut sit finis litium*" meaning the interest of the public is to find conflicts comes to an end as soon as practicable. In the contrary, endless litigation is not only against the public interest, but also against the purpose of setting judiciary in the country. When the applicant sleep on his rights for whatever time, beyond the time limitation prescribed by the law of Limitation, he may be allowed to continue sleeping on it forever.




This being the legal position which I cannot change it, then the applicant is the one to blame for sleeping over his rights if any. All in all, this application in any standard, lacks merits and is intended to delay the ends of justice contrary to public policy and to the parties' interest. In totality, this application is accordingly dismissed with costs payable to the 1st respondent.

I accordingly order.

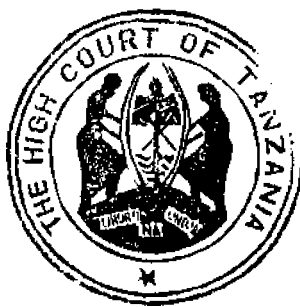
Dated at Mtwara in chambers this 14th day of April, 2021





P.J. NGWEMBE
JUDGE
14/04/2021

Court: Ruling delivered at Mtwara on this 14th day of April, 2021 in the presence of the applicant and Mr. Emmanuel Ngongi, Advocate for the respondent.

Right to appeal to the court of appeal explained.




P.J. NGWEMBE
JUDGE
14/4/2021