

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC LAND APPLICATION NO. 26 OF 2021

(Originating from the High Court of Tanzania at Mbeya in Land
Appeal No.61 of 2020)

AKIDA MWANGELA APPLICANT

VERSUS

CHARLES MIVINGILARESPONDENT

RULING

Date of last order: 08.07.2021

Date of Ruling: 06.08.2021

Ebrahim,J.

The Applicant has initiated the instant application for extension of time under **section 14(1) of the Law of Limitation Act, Cap 89 RE 2019** so that she can lodge an application for restoration of Land Appeal No. 61 of 2020 which was dismissed by this court on 24th day of February 2021 for want of prosecution with costs. The application is supported by an affidavit deponed by Akida Mwangela, the applicant.

This application was argued by way of written submission. The Applicant was represented by advocate Anna Samwel and the Respondent appeared in person.

In her submission in support of the chamber application, counsel for the Applicant adopted the contents of the affidavit deposed by the Applicant to form part of their submission.

In her submission, Counsel for the Applicant argue that the cause of the instant application is the fact that the Applicant did not enter appearance on the day when the appeal was called for hearing on 24.02.2021. Consequently, the court dismissed the matter for want of prosecution and subsequently the Applicant did not file the application for restoration on time; hence the instant application. She asserted the reason for the delay to file application for restoration order being the death of the Applicant's mother whom she was seriously sick for a long-time and it was the Applicant who was caring for her. In urging the court to consider the reason advanced for the delay as sufficient cause, she cited the case of **Benedict Mumello Vs Bank Of Tanzania** [2006] E.A 227 where the term sufficient cause was held to be determined according to the

circumstances of each case by looking as to whether or not the application has been brought promptly.

Urging the court further in considering the reason of sickness as being sufficient reason, Counsel for the Applicant invited the court to be persuaded by the holding of the case of **Pimak Professionel Muftak Limited Sirtek Vs Pimak Tanzania Limited and Farhaabdulah Noor**, Commercial Case No. 129 of 2017 where the case of **John David Kashekya Vs The Attorney General** where sickness of the Applicant was considered as sufficient reason after producing medical chit. In reminding the court of its discretionary powers to grant extension of time, she cited the case of **Yusuf Same and Another Vs Hadija Yusuf**, Civil Appeal No. 1 of 2002, CAT. She prayed for the court to allow the application.

Responding to the arguments advanced by the Counsel for Applicant, the Respondent firstly pointed out a clerical error on the citation of the case that it reads Miscellaneous Land Application No. 21 of 2021 instead of 26/2012. As I have intimated herein, the error is purely a slip of a pen which is easily corrected and the proper citation is Miscellaneous Land Application No. 26 of 2021.

Responding further, the Respondent invited the court to see the uncertainty of the Applicant's reason for the delay that while in her submission she said that she was taking care of her late mother, at para 5 she said her mother passed on and then she fell sick which was the reason for her failure to file the application for restoration within the prescribed time by the law. He was therefore of the views that the Applicant could not explain good cause to extend time. He conceded to the position of the law that the extension of time is granted at the discretion of the court (**Yusuf Same case (supra)**). He qualified however that the applicant must adduce sufficient reasons for the delay. He also challenged the absence of supporting documents to support the Applicant's medical treatment as observed in the case of **Saida Shaban Vs Adamu Simon Mwamaka**, Misc. Land Application No. 43 of 2018 (HC-Unreported); and the case of **Yustina Lemi Vs Leah John and Others**, Miscellaneous Land Application No. 38 of 2018 which observed that the Applicant failed to convince the court to exercise its discretion to extend time. He challenged also that the Applicant failed to account for each day of delay as emphasised by the Court of Appeal in the case of **Yazid**

Kassim Mbakileki Vs CRDB (1996) Ltd Bukoba Branch and Another, Civil Application No. 412/04 of 2018. He thus prayed for the application to be dismissed with costs.

Extension of time is a discretionary power of the court to be exercised judiciously. The Court of Appeal in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women Christians Associations**, Civil Application No. 2 of 2010 (see also the case of **Hamisi Mohamed (as an administrator of the estate of the late Risasi Ngawe) Vs. Mtumwa Moshi (as administratrix of the estate of the late Moshi Abdallah)**, Civil Application No. 407 of 2019, on the requirement to show that the delay was caused by a good cause; established guidelines to be observed by Court in granting extension of time. The Court held as follows:

"Four guidelines which should be observed by Court in granting extension of time: that is:

- a) The applicant must account for all the period of delay;*
- b) The delay should not be inordinate*
- c) The applicant must show diligence; and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take, and*

d) If the court feels that there are other sufficient reasons, such as existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged"

Coming to our instant application, reason for the delay advanced by the Applicant is pegged at para 5 of her affidavit which advocate Anna Mwangela adopted its contents to form part of their submission. Paragraph 5 of the Applicant's affidavit reads as follows:

"That, unfortunately my mother passed away and I used more time to make arrangement of burial (sic) ceremony, thereafter I was also serious sick (sic) as the result I failed to manage the filing of the application for restoration order within the limit prescribed by law".

In observing the reason advanced by the Applicant, three things are conspicuously uncertain. Firstly, as contended by the Respondent, this paragraph is contrary to the oral submission made by the Counsel for the Applicant that the reason for the delay was solely because the applicant was taking care of her late mother who was ill for a long time. Secondly, the Applicant has not stated as to when she became aware her application has been dismissed for want of

prosecution and how. She has also not stated when her mother fell sick and when did she pass on. More-so if we were to take for argument's sake that she also fell sick, then when did she fell sick and when did she get better to manage to file the instant application? Thirdly, as also observed by the Respondent, there is neither medical chit to support the illness of her mother, burial or death certificate nor medical chit for herself as a proof that she fell sick. At this juncture and in so far as the facts and circumstances of this case are concerned, I associate myself fully with the principles held in the cited cases of **Saida Shaban Vs Adamu Simon Mwamaka (supra)** and **Yustina Lemi Vs Leah John and Others (supra)** that proof by documentation in the circumstance of this case was paramount. This is lacking instead we have empty words of the Applicant which I find difficult to believe. Again, I also subscribe to the holding of the Court of Appeal in the cited case of **Yazid Kassim Mbakilek (supra)** on the requirement to account for each day of delay. In order to convince the court that the delay was not out negligence, disinterest or sloppiness (**Lyamuya Construction Company Ltd (supra)**), Applicant ought to have availed the court with the time line within

which her mother fell sick and passed on; herself falling sick up to the time when she filed the instant application.

To support her assertion, Counsel for the Applicant cited the case of **Pimak Proffesional (supra)**. This case was not attached with the submission so that the court can consider it in its adjudication since it is unreported case. That notwithstanding, the principle held on the quotation provided by the Counsel for the Applicant is self-defeating because the same shows that the Court of Appeal allowed sickness as a good cause because the Applicant produced a medical chit. A proof that is lacking in this application.

From the above position, I find that the applicant has not established any reasonable and sufficient cause for the delay to warrant this court to exercise its judicial discretion. Therefore, I dismiss the application with costs.

Accordingly ordered.



Mbeya

06.08.2021

A handwritten signature in blue ink, appearing to read "R.A. Ebrahim".

R.A. Ebrahim

Judge