

IN THE UNITED REPUBLIC TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

DISTRICT REGISTRY OF MOROGORO

AT MOROGORO

MISC. LAND APPLICATION NO. 56 OF 2022

(Arising from Land Appeal No.80 of 2021, High Court Dar es Salaam)

BAYIM KALYASA 1ST APPLICANT
KASIMU MALOKA 2ND APPLICANT
IBRAHIM MAYA 3RD APPLICANT
MASULI KALYASA 4TH APPLICANT
ASHURA KALYASA 5TH APPLICANT

VERSUS

ATHUMANI NYUMBANIKI 1ST RESPONDENT
STANSLAUS NAKUYOA 2ND RESPONDENT
MAVUMBI NJALAMOTO 3RD RESPONDENT

RULING

Date of last order: 23.11.2022

Date of Ruling: 13.12.2022

MALATA, J

This application is brought under section 14(1) of the Law of Limitation Act [Cap 89 RE 2019] and supported by the 1st applicant's affidavit. In the application, the applicants are seeking extension of time within

which to file an application for bill of costs out of time arising from Land Appeal No. 80/2021.

This court record depicts that, Hon. Chaba J dismissed Land Appeal No.80 of 2021 for want of prosecution with costs. As such, the applicants herein who were the respondents in Land Appeal No.80 of 2021, want to have costs as the court dismissed the appeal with costs. The Applicants herein failed to file bill of costs within time, thence the present application for extension of time within to file bill of cost out of time.

At the hearing of this application the second, third and fourth applicants were absent without any information. The first applicant and all respondents appeared in person.

As a result of non-appearance of the second, third and fourth applicants this court decided to proceed with hearing of the application in their *absentia*.

Submitting in support of application the first applicant prayed the court to honour the application and grant the applicants with the prayed orders based on the reasons advanced in the application.

In reply to the submission by the first applicant, the respondents strongly opposed the application on the ground that, applicants have failed to show good cause for delay. They submitted that, the reasons for failure to file application within time as per their affidavit was due financial constraints. As such, all the applicants were forced to engage into agricultural activities in order to get money. He further submitted that, it is impossible for all the applicants to run short of money at the same time, thus the reason given is no good cause in law. They, thus prayed to dismiss the application with cost for lack of sufficient reason for delay.

In his rejoinder, the first applicant said that, applicants have a genuine reason, because it is possible for many people to fall short of money at the same time like what it happened to five applicants herein. He, thus prayed the application to be granted.

Having heard the submissions from both parties to the case, this court commences by stressing the governing principles in granting extension of time. It is settled law that whether or not to grant extension of time is court's discretionary mandate which has to be exercised judiciously basing on the facts of each case. The law and court's decision provide that, for extension of time to be granted, applicant must have shown

good cause to the satisfaction of the court. There is, however, no invariable definition or hard and fast rules as to what constitutes "**good cause**".

Rule 4 of the Advocates Remuneration Order, 2015 published through Government Notice NO. 263 on 17/07/2015 provides that;

*"A decree holder may, **within sixty days** from the date of an order awarding costs, lodge an application for taxation by filing a bill of costs prepared in a manner provided for under Order 55."* (Emphasis in mine)

Based on the above provision of the law, the applicants were required to file bill of cost within sixty days from the date of order, that is to say, on 17/03/2022 but they filed application for extension of time on 18th October, 2022 being more than seven months from the date of order.

In determining whether good cause has been shown to warrant extension of time, Courts have established some key factors for consideration. These includes; **one**, whether the applicant acted candidly, **two**, reasons for the delay, **three**, the length of the delay, **four**, the degree of prejudice to the respondent if time is extended, **five**, whether there is an arguable case such as whether there is a point of law or illegality of the impugned decision, **six**, applicant must account

for each day of delay and **seven**, there must be no negligence on the part of the applicant and **eight**, promptness of taking action to pursue for the matter and **nine**, implementation status including execution of court's order and **ten**, existence of fraud, conspiracy, dishonesty, misrepresentation and cheating surrounding the matter in question benefiting the decree holder through such illegal means. Some of the afore referred factors were considered by the Court of Appeal in **Tanga Cement Co. v. Jumanne Masangwa and Another**, Civil Application No. 6 of 2001 pointed it clearly among others.

As such, the question for determination is whether the five applicants herein have shown good cause for the delay to permit this court exercise its discretion powers to grant the sought order or not.

I have given due consideration to the reasons for delay and submissions for and in opposition and noted that, the reason advanced by the applicants in their affidavit is financial constraints, meaning that, all five applicants were faced with similar problem of having no money for drafting appeal and engaging an advocate for considerable time of more than seven clear months. However, the law is settled to the effect that financial constraint is not a sufficient ground for extension of time. This

position is well articulated in the case of **Zabitis Kawuka Vs. Abdul Karim (EACA)** Civil Appeal no 18 of 1987 where the court held that;

"We are aware that financial constraint is not a sufficient ground for extension of time"

However, there are cases the court may find exceptional circumstances where financial constraints could amount to sufficient reason to grant extension of time, based on the holding in the case of **Yusuph Same and Another Vs. Hadija Yusuph**, Civil Appeal No. 1 of 2002 in which the court affirmed its position in the case of **Constatine Victor John Vs. Muhimbili National Hospital**, Civil Application no. 214/18 Of 2020. The Court of Appeal stated that: -

"As observed in Yusufu Same (supra) in the excerpt reproduced above, financial constraints may not be a sufficient ground for extension of time. However, as observed in the same excerpt, there are exceptional circumstances when it can be sufficient. In that case, the person seeking extension of time was a widow on legal aid. It was observed that, in such circumstances, her plea of financial constraints could not be held to be insignificant."

In the present case, there are five applicants who claim to have faced financial constraints at one time for more than seven months and became liquid at the same time. This court has fallen to dissatisfaction of the reason advanced as causative for delay by the applicants, for obvious reason that, it neither fall within good reason nor in exception. Applicants did not describe how the same happened at a time to all of them and became good at the same time to all five applicants. There are no material facts convincing this court to satisfy itself on the same but remained as mere statement with no supporting evidence.

The applicants' reason for delay has failed to meet the test of being considered as good cause warranting this court exercise its discretionary powers thence granting extension of time. This is for the reasons that; **first**, the reason for financial constraints is left with no explanation and justification as to what extent and for how long they were financially unstable, **second**, the five applicants did not describe how each applicant faced similar problem at the same time and all became liquid at the same time, **third**, applicants did not account for each day of delay, they generally stated their reason to mean that they faced financial constraints with no particularisation from all five applicants to support the fact if really existed.

Accounting for each day of delay has been one of the key factors to be considered by the court in deciding whether to exercise its discretion to extend time or otherwise. In numerous cases such factor has been considered. To cite few cases by the Court of Appeal of Tanzania on these instances; **Dar es Salaam City Council Vs. S. Group Security Co. Ltd**, Civil Application No. 234 of 2015, CAT at Arusha and **Tropical (TZ) Limited Vs. Godson Eliona Moshi**, Civil Application No. 9 of 2017, CAT at Dar es Salaam.

Therefore, no special circumstances advanced by the applicants for financial constraints to be of significant or good cause.

Consequently, this court finds that, the application lacks merits for applicants' failure to advance good cause for failure to file bill of cost within sixty (60) days provided by the law. As such, the applicants' application is hereby dismissed with costs.

It is so ordered.



G. P. Malata
JUDGE

13/12/2022

Court

Ruling delivered on 13th December, 2022 in chamber in the presence of 3rd Respondent and in the absence of applicants.

~~G. P. Malata~~

~~JUDGE~~

~~13/12/2022~~

Rights of appeal explained to the parties.



~~G. P. Malata~~

~~JUDGE~~

~~13/12/2022~~