

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. LAND CASE APPLICATION NO. 10 OF 2022

(Arising from Land Appeal No. 10 of 2014, High Court of Tanzania at Tabora)

MALENDEJA MANG'OMBE.....APPLICANT

VERSUS

1. NYANZOBE LUTEMA.....1ST RESPONDENT

2. SUZANA LUTEMA.....2ND RESPONDENT

Date of Last Order: 08.02.2023

Date of Ruling: 21.03.2023

RULING

KADILU, J.

The applicant has applied for extension of time within which to file an application for setting aside ex-parte judgment in Land Case No. 10 of 2014 dated 27/02/2015. Prior to this application, on 27/7/2018 the applicant had filed Misc. Land Application No. 22 of 2018 in the High Court of Tanzania at Shinyanga for a similar purpose. The said application was struck out on 10/6/2020 with leave to refile within 30 days. He then filed a fresh application namely, Misc. Land Application No. 37 of 2020 which was dismissed on the ground that since Land Case No. 10 of 2014 was filed in, and fully determined by the High Court of Tanzania, District Registry of Tabora, it was the District Registry of Tabora which has jurisdiction to hear

the application for extension of time and that of setting aside exparte judgment.

The origin of this matter is Land Application No. 34 of 2012 filed by the applicant in the District Land and Housing Tribunal for Shinyanga over a disputed land measuring 30 acres. The application was decided in favour of the applicant on 05/02/2014. Aggrieved by that decision, the respondents filed Land Case Appeal No. 10 of 2014 in this Court which was heard exparte. Exparte judgment was pronounced in favour of the respondents on 27/02/2015. The time for setting aside the said exparte judgment was 30 days which expired on 27/3/2015.

In this application, the applicant alleges that he was never served with court summons to appear to defend his appeal and hear the exparte judgment. He contends further that he became aware of the exparte judgment after the respondents filed Misc. Application No. 87 of 2015 in the DLHT for Shinyanga applying for execution of the decree in the aforesaid Land Case Appeal No. 10 of 2014. Misc. Application No. 87 of 2015 was dismissed for want of prosecution on 23/6/2016.

However, on 24/7/2018, the applicant was served with summons to appear before the DLHT for Shinyanga where he was informed that Misc. Application No. 87 of 2015 which was dismissed for want of prosecution was set to be heard after exparte revisional order of the High Court of Tanzania at Shinyanga in Land Revision No. 06 of 2016. To motivate this application, the

applicant stated that he was faced with financial difficulties from 25/3/2022 which prevented him from filing this application immediately after he was supplied with a copy of ruling of Misc. Land Application No. 37 of 2020. The present application was made by chamber summons under Section 14 (1) of the Law of Limitation Act [CAP 89 R.E 2019], supported by an affidavit of the applicant.

The respondents filed a joint counter affidavit objecting the application on numerous grounds including, **firstly** that, the applicant was duly served with summons to appear in this court for hearing of Land Case Appeal No. 10 of 2014. **Secondly**, the applicant has no good cause for the delay as he was supplied with a copy of ruling of Misc. Land Application No. 37 of 2020 early on 17/3/2022. **Thirdly**, the applicant is not an indigent person as alleged because he managed to engage an Advocate throughout when the matter was heard in the High Court of Tanzania, Shinyanga District Registry.

When the matter was called for hearing, the applicant was represented by Mr. Geoffrey Tuli, learned Advocate, the 1st respondent was absent while the 2nd respondent appeared in person; without legal representation. Mr. Geoffrey prayed the applicant's affidavit to be adopted by the court in support of his application. In his submissions, he maintained that the applicant was not served with court summons to appear to defend his appeal and hear the exparte judgment. He stated that the exparte judgment was reached in absence of the applicant due to the reasons which are beyond the applicant's control.

He then urged the court to grant extension of time for the applicant to file application to set aside *exparte* judgment. To support his argument, he referred to the case of *Abutwalib Musa Msuya & 2 Others v Capital Breweries Ltd & 2 Others*, Civil Revision No. 2 of 2012, CAT at Dodoma, *Kiwengwa Ltd v ALOPI Tour World Hotels and Resort SPA & 2 Others*, Civil Appeal No. 240 of 2020, CAT at Zanzibar and the case of *Chausiku Athumani v Atuganile Mwaitege*, Civil Appeal No. 122 of 2007, High Court of Tanzania at Dar es Salaam, all unreported.

The 2nd respondent told this court that the applicant has not shown reasons for extension of time to be granted as he has not indicated what he was doing for all that long period. She stated that it is the applicant's habit to disobey court orders and absent himself from appearance whenever the case is in progress. She urged the court not to grant extension of time because the matter has taken so much time and it is very expensive for her to attend court sessions as she is coming all the way from Shinyanga to Tabora.

Having gone through submissions of the parties, rival and in support of the application, I find the fundamental issue for my consideration is whether the applicant has adduced sufficient reasons for the court to exercise its discretion for extension of time. One of the contentious issues in this application is the service of summons to the applicant to appear to defend his case in the High Court. The applicant insists adamantly that he never

received any summons. His advocate argued that there is no affidavit of the court process server showing that the applicant was served.

The respondents on the other hand, have maintained that summons was served to the applicant, but he neglected to attend court sessions. When the respondents were asked to prove that the applicant received summons, the 2nd respondent replied that she has a copy of the said summons in which the applicant signed acknowledging the receipt, but she left it at home. Mr. Geoffrey stated that there are irregularities in the decision which is sought to be set aside hence, the court has to grant an extension of time to the applicant.

As pointed out, at this stage my duty is to examine and establish whether the applicant has accounted for the delayed days or advanced reasons that prevented him from filing the application for setting aside ex-parte judgment within time, and not to deal with issues which shall be considered during hearing of the application for setting aside the said ex-parte judgment, if this application is granted. Therefore, whether the applicant was served with the summons to appear and defend the appeal or not, is not my focus for now.

It is the law under Section 14 (1) of Law of Limitation Act that for the applicant to be granted extension of time, he has to advance before the court reasonable or sufficient cause explaining what delayed or prevented him from filing the application or appeal timely so as to enable the court exercise its discretion. On what amount to good or sufficient cause the Court

of Appeal in the case of *Jumanne Hassan Bilingi v R.*, Criminal Application No, 23 of 2013 (CAT, unreported) stated as follows:

"...what amounts to good cause is upon the discretion of the court and it differs from case to case. But basically, various judicial pronouncements defined good cause to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time."

The Court of Appeal in various authorities has tried to set guidelines to be followed by the court when exercising its discretion to either grant or refuse to grant extension of time. See the cases of *Bushiri Hassan v Latifa Lukio Mashayo*, Civil Application No. 3 of 2007, *Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 and *Julius Francis Kessy & 2 Others v Tanzania Commissioner for Science and Technology*, Civil Application No. 59/17 of 2018 (all CAT, unreported).

In the case of *Lyamuya Construction Company Ltd (supra)* on the guidelines to be followed the Court of Appeal had this to say:

"As a matter of general principle, it is in 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 according to private opinion or arbitrary."

In a bid to advance reasonable or sufficient causes that delayed him to file the application to set aside ex-parte judgment, from paragraphs 2 to 12 of

his affidavit in support of the application, the applicant described the events that prevented him to file this application in time. Therefore, it is evident to me and I hold that, the applicant has advanced good cause warranting the grant of extension of time. In view of this, I order the applicant to file application to set aside exparte judgment within thirty (30) days from the date of this ruling. No order as to the costs.

It is so ordered.


KADILU, M. J.

JUDGE

21.03.2023.

Ruling delivered in Chambers on 21st March, 2023 in the presence of Mr. Geoffrey Tuli, Advocate for the Applicant, and Mr. Kazimil Philip, for the Respondents.




KADILU, M. J.

JUDGE

21.03.2023.