

**IN THE HIGH COURT OF TANZANIA
BUKOBA DISTRICT REGISTRY
AT BUKOBA**

MISC. LAND APPLICATION NO. 19 OF 2023

*(Arising from Misc. Land Appeal No. 52 of 2019 in the High Court of Tanzania
and Land Appeal No. 15 of 2019 in the District Land and Housing Tribunal of
Muleba, originated from Civil Case of No. 07 of 2018 of Kisanda Ward
Tribunal)*

ELGIDIUS SOSTHENS..... APPELLANT

VERSUS

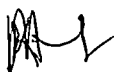
GERALD MWESIGA BONIPHAS..... RESPONDENT

RULING

K. T. R. MTEULE, J.

05th June 2023 & 14th June 2023

ELGIDIUS SOSTHENS, the Applicant herein is seeking for extension of time to file an application to set aside an ex-parte judgment against the decision issued by this court on **21st December 2021** in **Misc. Land Appeal No. 52 of 2019**. The application was brought under the provision of **section 14 (1) of the Law of Limitation Act Cap. 89 R.E 2019** and **section 95 of the Civil Procedure Code Cap 33 R.E 2019** and supported by an affidavit sworn by Mr. Derick Zephurine, the Applicant's Counsel.



The application is strongly opposed by the Respondent through a counter affidavit deposed by Mr. Lameck John Erasto, the respondent's Counsel.

The application was heard orally.

Having considered parties submissions, and the sworn statements, this Court finds one main issue for determination which is **whether the applicant adduced good reason for this Court to grant extension of time for the applicant to file application for setting aside Ex-parte judgement and order of Misc. Land Appeal No. 52 of 2019.**

According to the affidavit and the submissions of the Applicant's Counsel there are two reasons advance for the application of extension of time to be granted. These are technical delay and right to be heard.

Starting with the ground of technical delay, the applicant's Counsel contended that when the applicant became aware of the Ex-parte judgement issued on **21st December 2021**, he timely on **13th January 2022** filed **Misc. Land Application No. 9 of 2022** to set aside Ex-parte judgment. That the said application was struck out on 31st January 2023 for being defective due to wrong citation of the provisions of the law. That on 10th February 2023 he applied for copies



of ex parte ruling of **Misc. Application No. 9 of 2022**, which was supplied on **23rd February, 2023** when he was already time barred and within 5 days he prepared and filed this application for extension of time.

In his submission, Mr. Zephryne stated that the days spent in court are amount to technical delay and as well as the time of following documents from the registry are to be exempted. He supported his argument by the case of **Stephane Ngambale v. Onesmo Chaula and others**, Civil Appeal No. 27 of 2020, CAT, at Iringa.

On other hand the respondent's Counsel conceded that there were various applications filed by the applicant, but he contended that the applicant failed to take immediate action after being aware of the ex-parte judgment on **27 September 2023**.

According to Mr. Lameck, the the fact deponed in the affidavit that the applicant was informed about the ex parte judgment without evidence cannot be relied upon if the informer did not swear any affidavit.

He further claimed that there are 23 days on delay which not accounted for. Supporting his position he cited different cases including the case of

Bishop Roman Catholic Diocese of Tanga v. Casmir Richard Shenkai, Civil Application No. 507/12 of 2017 which directs that each day of delay must be accounted for. He added that the alleged 5 days for preparation amount to inordinate. In his view in this matter the delay is not explained.

In rejoinder Mr. Dunstan insisted that extension of time can only be granted upon sufficient ground adduced.

The Law guiding the timing for filing of application for setting aside Ex-parte judgement is provided **under Part III Item 5 of the Law of limitation Act Cap 89 R.E 2019** which directs that for the time limit to make an application for setting aside an ex-parte decree must be done within 30 days. Again, **section 14 (1) of the Law of Limitation Act Cap 89 R.E 2019** empowers this court to grant extension of time.

Having considered the rival submissions, I would point out that it is an established principle in numerous cases that extension of time is not an automatic right. The Applicant must adduce sufficient or good reasons for delay for the Court to grant extension of time. It is the discretion of the Court to grant an application for extension of time upon such a good cause shown. [See. **Tanga Cement Company vs. Jumanne D.**



Masangwa and Another, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported); and **Praygod Mbaga V. Government of Kenya Criminal Investigation 5 Department and Another**, Civil Reference No. 4 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported)].

What amounts to reasonable cause or good cause is to be determined by reference to all the circumstances of each particular case. In the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal of Tanzania, at Dar es Salaam, (Unreported), the Court developed five principles to guide determination of what amounts to good cause for the application for extension of time. These grounds according to Lyamuya's case are as follows: -

1. That the applicant must account for all the period of delay,
2. The delay should not be inordinate,
3. The applicant must show diligence,



4. Other reasons, such as the existence of a point of law of sufficient importance not apathy negligence or sloppiness in the prosecution of the action that he intends to take and lastly,
5. If the court feels that there are other sufficient grounds such as the illegality of the decision sought to be challenged.

From the above authority for the applicant to enjoy Court's discretionary power, the Court may be guided by the above-mentioned criteria in granting extension of time.

In this matter, even though two reasons were advanced, parties argued on technical delay despite of the long submissions they had. It is well known for the technical delay to stand, one must differentiate actual delay and technical one, as was discussed in the case of **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd.**, Civil Reference No. 18 of 2006 (unreported), cited in **D.N Bahram Logistics Ltd & Another v. National Bank of Commerce Ltd & Another**, Civil Reference No. 10 Of 2017, CAT, Dar es Salaam (unreported) it was held;-

*"A distinction had to be drawn between cases **involving real or actual delays and those such as the present one which***



clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."


Basing on above authority, the highlighted portion is relevant in this application. It is on record that the Ex-parte judgement was issued on **21st December 2021** and on **13th January 2022** the applicant filed **Misc. Land Application No. 9 of 2022** to set aside Ex-parte award. That means the first application was filed within 30 days as per the requirement under the Law of Limitation Act. It is not disputed that the said application was struck out for being defective for wrong citation of the provisions, as deponed at paragraph 6, 7 and 9 of the affidavit. On **23rd February 2023** the applicant was supplied with the ruling of **Misc. Application No. 9 of 2022**, and he filed the present application seeking for extension of time on **16th March 2023**. That means he used 23 days in preparing his application. In my view since the first application for setting aside, **Misc. Application No. 9 of 2022** was



filed on time, there was diligence on the part of the applicant and that the dismissal amounted to technical delay which is excusable.

Spending 23 days to prepare the instant application in my view is not inordinate. In my view and for interest of substantive justice, I find that the applicant has established sufficient cause to justify extension of time basing on technical delay. Consequently, I extend a time to file application for setting aside against the impugned decision. The application to be filed within 14 days from today It is so ordered.

Dated at Dar es Salaam this 14th day of June 2023.



KATARINA REVOCATI MTEULE
JUDGE
14 /06/2023

Court:

Ruling delivered this 14th Day of June 2023 in the presence of the both parties.



KATARINA REVOCATI MTEULE
JUDGE
14/6/2023