

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE SUB REGISTRY OF KIGOMA)  
AT KIGOMA**

**MISC.CIVIL APPLICATION NO. 37 OF 2022**

(Arising from the Ruling of the High Court of Tanzania at Kigoma in Misc. Land Application No. 11 of 2022 and Land Appeal Case No. 189/2018 of the District Land and Housing Tribunal for Kigoma and original Land Case No. 08 of 2020 of Buhoro Ward Tribunal.)

**NEZIA KIPALA..... APPLICANT**

**VERSUS**

**TEREZIA BANDIKO.....RESPONDENT**

Date of Last Order: 02/08/2023

Date of Judgement: 18/08/2023

**RULING**

**MAGOIGA, J.**

The applicant, **NEZIA KIPALA** preferred this application seeking for an order for extension of time within which to file an application for restoration of Misc. Land Application No. 11 of 2022 dismissed for want of prosecution on 09/08/2022, costs, and any other relief that this court may deem fit to grant. The application was made under section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019] and Section 95 of Civil Procedure Code [CAP 33 R.E 2019] and any other enabling provision of the law. As practise of this court, this application was supported with affidavit of the applicant stating the reasons why this application should be granted.

Upon being served, the respondent filed a counter affidavit stating the reasons why this application should not be granted.



When this application was called on for hearing, the applicant was represented by Mr. Kalimunda Yugalila, learned advocate, while the respondent had the legal services of Mr. Sylvester Damas Sogomba, learned advocate.

Arguing the application, Mr. Yugalila prayed to adopt sworn affidavit by the applicant and added further that, the purpose of this application is upon grant to make an application for restoration of Misc. Land Application No.11/2022 which was dismissed for want of prosecution on 9/8/2022. The learned advocate pointed out that the reason for the delay was sickness of the advocate's wife at Dodoma whereby the learned advocate was obliged attending her without any notice to the applicant and as such lost track of the application which was later on dismissed for want of prosecution. Another reason stated is, the right to be heard as enshrined in the constitution.

According to Mr. Yugulila, sickness amounts to good cause as defined in the case of **Laurent Simon Assenga vs Joseph Magoso & 2 others, Civil Application No. 50 of 2016 CAT at Dar es salaam** where it was stated that good cause is a question of facts which varies from one case to another.

Therefore, much as the wife of the applicant's advocate was sick and the advocate was attending her amounts to a good cause. Finally, Mr. Yugulila

prayed that this court be pleased to grant the prayers as contained in the chamber summons with costs.

On the other hand, Mr. Sogomba for the respondent resisted the grant of the application by adopting his counter affidavit and prayed the application be dismissed with costs. According to Mr. Sogomba, the affidavit of the applicant stated no good in the absence of the exact date they knew of the dismissal order and no affidavit of the said advocate was annexed to substantiate where he has been all these days unaccounted for.

It was Mr. Sogomba's arguments that the applicant did not say why she did not herself come to court as such no evidence to show that the advocate was indeed attending his sick wife. More so, no affidavit of the advocate to support her application but just mere words.

According to Mr. Sogomba, this application was filed in November 2022 and the matter was decided on 9.8.2022, so there are more than 100 days uncounted for. The learned advocate faulted the applicant for failure to take steps and account for those 100 days which is inordinate delay that can't help her and with strong words prayed that this court be pleased to dismiss this application with costs.





In rejoinder, Mr Yugalila argued that the account for each day of delay is what his client did by making a follow up with her advocate. He insisted on his earlier on prayers.

In this application, the main issue is whether this application is meritorious.

I have dispassionately considered the competing arguments for and against this application and I am not prepared to grant the same. My reasons are plenty. **One**, my perusal of the record, I found as a matter of facts, and as correctly argued by Mr. Sogomba, there is no supportive affidavit that the applicant's advocate was assisting his sick wife, hence, unable to communicate with her client leading to the Application No. 11/2022 to be dismissed. The need to have an affidavit of a person so material like the advocate in this case was stated in the case of **John Chuwa v. Anthony Ciza** (1992) TLR 233. **Two**, I have gone as well through the affidavit in support of this application and as well considered the period between when the application was dismissed and when this application was preferred and found that the delay is inordinate with no paragraph in the affidavit to account for each day of delay. **Three**, extension of time is given only when one accounts for each day of the delay, when the delay is not inordinate, and when the applicant shows diligence and not apathy, negligence or sloppiness in the prosecution of



the actions which are to be taken. See; **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)**.

Therefore, in the instant matter the applicant has not accounted for each day of the delay as from the date of the impugned ruling on 09/08/2022 to 21/11/2022 when he ultimately lodged the application in this court.

**Four**, the argument by the applicant that the constitution guaranteed right to be heard, is true and fundamental but not absolute. The right has to be exercised subject other laws, and in this application, the applicant did not meet the threshold of the other laws, hence, rejected.

In the upshot, it is my finding that this matter discloses no good cause for the Court to exercise its powers to enlarge the time within which to file an application for restoration of the application out of the prescribed time. Accordingly, I dismiss this application in its entirety with costs.

It is so ordered.

Dated at Kigoma this 18<sup>th</sup> day of August, 2023.



  
**S. M. MAGOIGA**  
**JUDGE**  
**18/08/2023**