

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB-REGISTRY
AT MBEYA**

MISC. LAND APPLICATION NO. 30 OF 2023

*(Arising from the High Court of Tanzania in Bill of Costs No. 17 of 2022, Originating
in Land Appeal No. 39 of 2021)*

MWANANYONGO JULIUS.....APPLICANT

VERSUS

MARIA YISEGA..... RESPONDENT

RULING

Date of Last Order: 01.08.2023

Date of Ruling: 29.09.2023

NDUNGURU, J.

The applicant MWANANYONGO JULIUS is seeking an extension of time (which he himself calls enlarge time) within which to lodge an application for setting aside of an *ex-parte* decision delivered by the taxing master out of time. He also applies for costs. The application was made under 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. It is supported by an affidavit of the applicant.

The respondent did not file counter affidavit to challenge the factual account of the applicant but appeared and filed her written submissions which means that she is barred from challenging facts deposed by the applicant through his affidavit.

The application was heard by way written submissions. Both parties appeared in person, unrepresented.

The applicant's main reason for grant of this application is that the impugned decision was made in his absence and without being notified. Also, that he became aware of the decision on 7/11/2022 and on 8/11/2022 he wrote a letter requesting for copies of proceedings and ruling. That when he became aware he was already late to apply for setting aside of the impugned decision which is *ex-parte* decision. He argued in his submissions that failure to summon him to appear on the hearing date or to be notified of the date of the ruling denied him the right to be heard.

In reply, the respondent submitted that the applicant has failed to account for each day of delay as per the requirement of the law. For that she referred to the **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). Also that the

applicant did not demonstrate any good cause, hence his application be dismissed.

In his rejoinder the applicant has tried to make reference to the legal requirement for the court to grant an application for extension of time. However, I regrade to state here that the applicant has failed to associate those legal requirements with his application before this court. The submissions thus, are of no importance to him.

Having considered the parties' submissions, the issue for consideration is whether the applicant has furnished good reason(s) for this court to grant the application.

Generally, extension of time is court's discretion to be judiciously exercised upon sufficient cause being shown. See the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012 CAT (unreported). And what amount to sufficient cause have not been stated by any statute but depends on the circumstance and facts in each case. See **Lyamuya Construction Company Limited** (supra) and **Tanga Cement Company Limited v. Jumanne D. Massanga and Another**, Civil Application No. 6 of 2001 (unreported), in the latter case it was observed that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have been taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for delay or lack of diligence on the part of the applicant."

As per the case of **Cosmas Construction Co. Ltd vs Arrow Garments Ltd** [1992] TLR 127 cited by the applicant. It is true that when matter is taken out *ex-parte* a non-appearing party has to be notified on the date of decision.

Nonetheless, the case at hand, the application was filed in the Court on 22/5/2023. The applicant did not make any explanation as what happened from November, 2022 when he knew about the existence of the decision to 22/5/2023 when he filed the present application. The law requires a person who applies for a court to extend time to account for each day of delay; see **Ramadhani I. Kihwani vs Tazara**, Civil Application No. 401/18 of 2018 CAT at Dar es Salaam **Lyamuya Construction case** (supra). Therefore, failure by the applicant to explain or to establish what he was doing from the date he became aware of the impugned decision to the date he filed this application

which is almost six months, it is my view that he has failed to furnish sufficient reasons for this Court to grant the application.

In the premises, I dismiss the application for want of merits with no order as to costs.

It is so ordered.




D.B. NDUNGURU

JUDGE

29/09/2023