

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
ARUSHA SUB REGISTRY  
AT ARUSHA**

**MISC. LAND APPLICATION NO 95 OF 2022**

(C/F High Court Land Appeal No 15 of 2018, Originating from the District Land and  
Housing Tribunal of Arusha in Application No. 32 of 2014)

**CHRISTINE P. KAMILI ..... APPLICANT**

**VERSUS**

**ERASTUS MTEMWA..... 1<sup>ST</sup> RESPONDENT**

**REWARD ELINAZA ..... 2<sup>ND</sup> RESPONDENT**

**LUMALIZA COURT BROKERS AND**

**AUCTIONEERS LTD ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

11<sup>th</sup> September & 30<sup>th</sup> October, 2023

**KAMUZORA, J.**

Under the provision of section 14 (1) of the Law of Limitation Act [Cap. 89 R. E. 2019] and section 2 (1) of the Judicature and Application of Laws Act [Cap 385] R.E 2019, the Applicant brought an application for extension of time to file an application to set aside the dismissal order issued by this court in Land Appeal No 15 of 2018 dated 05<sup>th</sup> February 2020. The chamber summons is supported by the affidavit of the Applicant which expounds the ground for the application. The

application was challenged by the 1<sup>st</sup> Respondent only in his sworn counter affidavit.

Hearing of this application was conducted by way of written submissions but in the absence of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent who defaulted appearance despite service being properly effected. Mr. Kapimpiti Mgalula, learned advocate, appeared for the Applicant while Mr. Duncan Joel Oola, learned advocate, appeared for the 1<sup>st</sup> Respondent.

In his submission in support of application Mr. Mgalula referred the affidavit in support of application and argued that the delay by the Applicant to file an application for setting aside the dismissal order was due to sickness. It was explained that the Applicant was sick and was treated at Meru District Hospital from 05/02/2020 to 30/06/2022. That, she was diagnosed with chronic abdominal pain and was recommended to attend gynaecological clinic on monthly basis. That, after she was discharged, she instructed and engaged a lawyer to prepare and bring this application. For him, the Applicant's sickness constitutes a good cause for extension of time. To cement on his submission, Mr. Mgalula referred this court to the case of **Jehangir Aziz Abdulrasul Vs. Balozi Ibrahim Abubakar & Bibi Sophia Ibrahim**, Civil Application No. 79

of 2016 CAT at Dar es Salaam, **Malimo Lucas Mlay Vs. Beatrice Lucas Mlay & others**, Land Appeal No 40 of 2017

Mr. Mgalula added that if the application is granted, the Respondent will not be prejudiced. He referred the case of **Jesse Kimani Vs. S MC Cornel & another** (1966) EA 547 and prayed that for the interest of justice this court be pleased to grant the application.

In reply, Mr. Oola adopted the counter affidavit and submitted that the Applicant did not disclose true facts of the matter. He explained that on 6/3/2020 the Applicant filed Misc. Land Application No 16/2020 seeking for restoration of Misc. Land Application No 64 of 2019. That, the same was dismissed with costs on 05/02/2020 and the Applicant was condemned to pay Tshs 4,090,000/= and that is when the Applicant preferred the current application. To him, it is not true that the Applicant was sick or prevented by sickness from 05/02/2020 to 30/06/2020. He added that the reasons advanced in Misc. Land Application No 16/2020 when seeking for restoration of Misc. Land Application No 64 of 2019 was that she was attending funeral ceremony at Hedaru and nothing was deponed in relation to her sickness.

Mr. Oola also submitted that the Applicant's signature in the current application differs from that in Misc. Land Application No 16 of

2020. That, since the statement in the counter affidavit as regard to the difference in signature was not countered by the Applicant, it goes unopposed. Reference was made to the case of **Patrick Ezron Vs. The Republic** (DC) Criminal Appeal No 51 of 2020.

Referring to the case of **Patrick Sanga Vs. Republic**, Criminal Application No 8/2011 Mr. Oola further submitted that litigation must come to an end. That, for extension of time to be granted, the Applicant must adduce sufficient reasons which in the current application, the Respondent consider that the Applicant failed. He insisted that this court cannot exercise its discretion where the applicant fail to demonstrate good cause for extension of time. Reference was made to the case of **Daphene Parry Vs. Murray Alexander Carson** (1962) EA, **Yusuf Same & another Vs. Hadija Yusufu**.

Pointing at paragraph 4 of the Applicant affidavit, Mr. Oola submitted that it was expected for the applicant to submit gynaecologist Doctor's report and or medical chit stating on how the Applicant attended or was treated. That, the annexure to the affidavit does not prove that the Applicant was admitted or attended the clinic and no proof for treatment. He referred this court to the case of **Granitech (T) Company Limited Vs. Diamond trust Bank Tanzania Ltd &**

**others,** Civil Application No 447/16 of 2021 CAT at Dar es salaam. He maintained that there is nothing to prove the alleged sickness hence prays the application to be dismissed.

In his rejoinder, Mr. Mgalula reiterated his submission in chief and denied the allegation that the Applicant made an application for restoration. He explained that applicant never filed any application and that is the reason the signature differs from her current application. He insisted for this court to consider the medical report attached to the affidavit and find that the applicant was not laxity or negligent in pursuing her right thus, the application be granted.

Upon reading the chamber application, affidavits and submission made for and against the application, the issue that need to be resolved is whether the Applicant has shown good cause for this court to exercise its discretion power in extending time to file an application to set aside the dismissal order of this court. From the Applicant's affidavit in support of the application and the submission thereto, one ground was advanced by the Applicant for her delay. That, she was prevented by sickness from filing the application on time.

It is a settled principle that sickness if proved, amount to a good reason for the extension of time. See, the case of **John David**

**Kashekta Vs. the Attorney General**, Civil Application No 1 of 2021  
CAT (unreported).

In course of discussing sickness as ground for extension of time, I find it prudent to tress the history of this matter. The record shows that the Applicant herein was also the Applicant in Application No. 32 of 2014 before the District Land and Housing Tribunal (DLHT). The judgment in that application was delivered on 14<sup>th</sup> December, 2017 in favour of the Respondent herein. The Applicant preferred an appeal to this court, Land Appeal No. 09 of 2018/Extended Land Appeal No 15 of 2019 which however was dismissed for want of prosecution on 22<sup>nd</sup> August, 2019. The Applicant preferred an application for restoration of the dismissed land appeal, Misc Application No 64 of 2019 but the same was also dismissed for want of prosecution on 05/02/2020.

The applicant preferred this application for extension of time to set aside dismissal order issued on 05/02/2020. From the medical report annexed to the Applicant's affidavit (Annexure CH-4), the Applicant claim that she was unable to timely bring the current application because she was sick and treated from 05/02/2020. It is the same date her application was dismissed by this court for want of prosecution. The medical report shows that the Applicant underwent several treatment

processes and was sometimes admitted at the hospital for major operation. However, the report does not indicate the time the Applicant was admitted and if her sickness exempted her from performing other duties. It only shows that after she was discharged from hospital, she was directed to attend gynaecological clinic on monthly basis. Since the applicant was allegedly admitted, it was expected for her to present medical chits indicating so and not a generalised report like the one annexed to the affidavit. Similarly, since the applicant alleged that she was directed to attend clinic, her report on her attendance could have been procured to justify the same. However, there is no any other report indicating that she has been attending hospital or clinic since then or if she has recovered or not. In the absence of any other fact, the medical report annexed suggest that until now the Applicant is still attending the clinic but still, she was able to file the present application. In my view, the mere fact that the applicant was directed to attend clinic on monthly basis is not a conclusive proof that she could not pursue her legal rights. In that regard, this court is not convinced that the delay in filing an application to set aside the dismissal order was attributed by the Applicant's illness.

In addition, the mode the medical report was prepared suggest that it was intended to justify the means but does not clearly prove that the Applicant had a justifiable delay. I say so because, the Applicant was unable to demonstrate clearly the period she spent in hospital for treatment and whether after her discharge, she was bedridden and could not do anything. Attending clinic is not in itself a conclusive proof that the Applicant could not pursue anything. From February, 2020 when the application was dismissed to July, 2022 when this application was filed in court is almost one year and four months and the Applicant was unable to account for each day of delay. In considering the length for the delay which is one year and four months and the fact that the Applicant failed to accounted for each day of delay, this court is of the settled mind that no reasonable ground for extension of time. I am also bound by the principles set by the Courts of Appeal decision in **Lyamuya Construction Co. Ltd Vs. Board of Trustees of Young Women's Christian Association (YWCA)**, Civil Application No. 2 of 2010.

Apart from that, this court also noted that Annexure CH-3 to the Applicant's affidavit which are the proceedings in respect of Misc. Land Application No 64 of 2019 shows that the Applicant was represented by



Mr. Godfrey Mushi, learned advocate. Therefore, if the Applicant was sick as she claimed to be, it was expected for her lawyer to proceed with the matter as it was initially done.

In the upshot, I find that the Applicant was unable to demonstrate that she had good reason for the delay. Sickness in the circumstance of this case, was not proved to justify time enlargement. I therefore find no merit in this application and the same is hereby dismissed with costs.

**DATED** at **ARUSHA** this 30<sup>th</sup> October, 2023.



  
**D.C. KAMUZORA**

**JUDGE**