

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

MISC. LAND APPLICATION NO. 66 OF 2023

(Originating from HC Misc. Land Application No. 15/2022)

FRANK NGOWI ----- APPLICANT

VERSUS

TANZANIA BUILDING AGENCY ----- 1ST RESPONDENT

THE ATTORNEY GENERAL ----- 2ND RESPONDENT

RULING

25/9/2023 & 23/10/2023

ROBERT, J:

The applicant, Frank Ngowi, filed Misc. Land Application No. 15 of 2022, which was dismissed by this Court on 24th May 2023, for want of prosecution due to the applicant's failure to enter appearance on two occasions without notice to the Court. The applicant now seeks an order for extension of time to lodge an application for leave to set aside the dismissal order, which is argued to be out of time. The application is supported by an affidavit sworn by the applicant.

During the hearing of this application, the Applicant appeared in person, while the Respondent was represented by Ms. Sabina Yongo, State Attorney.

The Applicant argued that he had never missed court proceedings and expressed his suspicion that certain individuals were working against his case to prevent the government from selling him a house. He urged the Court to consider the records of the matter and grant his application.

In opposition, Ms. Sabina Yongo argued against the application, invoking principles laid out in the case of **Vedastus Raphael vs Mwanza City Council and 2 others**, Civil Application No. 594/08 of 2021. These principles, derived from **Lyamya Construction Company Limited vs Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010, include; accounting for the period of delay, avoiding inordinate delay, demonstrating diligence, and showing the existence of legal issues of sufficient importance.

Ms. Yongo contended that the applicant failed to account for each day of delay as required by section 14(1) of the Law of Limitation Act. She explained that, this application was filed 53 days after the dismissal order, exceeding the prescribed 30 days according to the Law of Limitation Act.

Furthermore, Ms. Yongo argued that the applicant was negligent in prosecuting his case, failing to comply with the third principle in

Lyamuya's case, which requires diligence and the absence of apathy, negligence, or sloppiness in the prosecution of the action. She contended that the applicant failed to adduce sufficient cause for the delay and prayed for the application to be dismissed with costs.

In a brief rejoinder, the applicant reiterated his claim of never missing court and sought a just decision.

This Court has considered the submissions of both parties and the principles guiding the grant of an extension of time. In accordance with the case of **Vedastus Raphael vs Mwanza City Council and 2 others**, Civil Application No. 594/08 of 2021, as well as the principles stated in **Lyamya Construction Company Limited vs Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010, the following findings are made:

The Court noted that, the dismissal order of this Court was delivered on 24th May, 2023, and the present application was filed on 15th July, 2023, which is 53 days from the date of the order. The law prescribes a 30-day period for applying to set aside a dismissal order. The applicant was late by 23 days. Additionally, the applicant did not account for the 16-day delay between being informed of the dismissal on 29th June, 2023, and filing the application on 15th July, 2023.


The Court finds that, the applicant's actions reveal lack of diligence in the prosecution of his case. He failed to attend court on the date fixed for the hearing of the case on 13th March, 2023, and did not follow up on subsequent hearing dates until 29th June, 2023. This demonstrates negligence and apathy, which is inconsistent with the required diligence.

The Court observed further that, this application failed to demonstrate any legal issue of sufficient importance warranting the setting aside of the dismissal order. The dismissal was due to the applicant's absence on the day fixed for hearing, which suggests a failure on his part to pursue the action diligently.

Based on the foregoing considerations, this Court finds that the applicant has not met the necessary criteria for an extension of time. He has not accounted for the period of delay, failed to demonstrate diligence in the prosecution of his case, and has not raised any legal issues of importance justifying the setting aside of the dismissal order. As a consequence, this application is dismissed with costs.

It is so ordered.




K.N. ROBERT
JUDGE
23/10/2023