

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPL. NO.439 OF 2017

JASON MUTAGULWA RWIZA.....APPLICANT

Versus

NATIONAL HOUSING CORPORATION.....1ST RESPONDENT

FOSTERS AUCTIONEERS & GENERAL TRADERS.....2ND RESPONDENT

Date of Last Order: 10.07.2018

Date of Ruling: 27.07.2018

R U L I N G

S.A.N. WAMBURA, J:

The applicant **Jason Mutagulwa Rwiza** has filed this application under the provisions of Section 14 (1) of the Law of Limitation Act Cap. 89 R.E 2002 and Section 93 of Civil Procedure Code Cap. 33 R.E. 2002 praying for orders that:

- a) This Court be pleased to grant the Applicant extension of time within which he can file his Application of setting aside the dismissal order out of time.*
- b) Costs of this Application be provided for.*
- c) Any other order (s) this Honourable Court may deem proper to grant in the circumstances of the Application.*

The application is supported by the affirmed affidavit of **Twaha Taslima** learned Counsel for the applicant.

Mr. Aloyce Sekule learned counsel for the 1st Respondent **National Housing Corporation** filed a counter affidavit bitterly challenging the application.

With leave of this court, the application was disposed of by way of written submissions. I thank both parties for adhering to the schedule.

In support of the application, Mr. Taslima contended that the applicant had instituted Land Case No.150 of 2013 against the respondents for breach of tenancy agreement by forcefully evicting him from his leased house without any lawful excuse. That the suit was scheduled for 1st Pre Trial Conference before Hon. Mansoor J.

He further submitted that the Pre Trial Conference could not proceed because when the Counsel for the applicant entered appearance in Order to proceed with the matter, he was

informed by the Clerk that the trial Judge has been transferred and the case had not yet been assigned to another Judge.

That sometime in July 2016 when perusing the Court file, he found out that the matter was dismissed for want of prosecution on 01/12/2014. He therefore decided to file an application for extension of time being Misc. Land Application No. 578 of 2016. However, the said application was struck out by this Court for having misspelt the names of the parties. The applicant has now filed this application.

Mr. Taslima averred that the reason for the applicant's delay to file the application for extension of time within time was because he was not notified of the date of the delivery of the said Order. That when the matter came on 01/12/2014, the trial Judge proceeded to dismiss the case without satisfying herself whether the applicant was notified as she Ordered on the last Order dated 05/11/2014. That the applicant was neither issued summons by the trial Judge nor was it served upon the applicant by the respondent. He was of the view that considering the fact

that the trial Judge was transferred, the new presiding Judge was supposed to issue fresh summons to the parties before dismissing the suit. He referred the Court to the cases of **Cosmas Construction Co. Ltd Vs Garments Ltd, [1992] TLR 127 Pg 28, Charles Moses Vs Shamte Khatib**, PC Civil Appeal No. 1 of 2002 (Unreported) and **Municipal Council Vs Kwenyambah Quacker**, Misc Civil Application No. 90 of 2004 which was quoted in the case of **Walter and Sewerage Authority Vs Salima Pili Tamaambe**, (HC) which held that it is the duty of the trial court to serve notice of the date set for delivery of judgment upon an absent party.

Mr. Taslima therefore prayed for the application to be granted as prayed on the ground that the applicant was not aware of the on going proceedings and he was not notified on the date of the dismissal of the case despite concerted efforts to make follow ups.

In response, Mr. Sekule prayed to this court to adopt the contents of the counter affidavit as part of his submissions. He further

submitted that the instant application was filed on 02/06/2017 which is approximately two (2) years and five (5) months after the dismissal of the suit for want of prosecution on 01/12/2014.

He contended that the applicant had not been able to account for every day of the delay as required under the law. He referred to the case of **Tanzania Sugar Board Vs Rombo Millers Limited**, Civil Application No. 13 of 2015 CAT at Arusha Registry where the court held that in an application for extension of time, the applicant has to account for every day of the delay.

Mr. Sekule was therefore of the view that since the applicant failed to account for each day of the delay from 01/12/2014 to 02/06/2017 when this application was filed, then the application should be dismissed with costs.

In reply Mr. Taslima reiterated his earlier submission in chief and further averred that the applicant was not just sitting on his rights rather he was honestly and diligently prosecuting the said application. He referred to Section 21 of the Law of Limitation

Act Cap. 89 R.E. 2002 to invite this court to exclude time used by the applicant to prosecute the said application.

May I point out on the outset that these new submissions shall not be considered in this ruling as they were brought up during their rejoinder and the other party had no opportunity of responding to them.

It is trite law that the court can grant extension of time only when there is no negligence, or inaction or want of bonafides on the part of the applicant as it was held in the case of **The Registered Trustees of the Archdiocese of Dar es Salaam VS The Chairman Bunju Village Government and 11 Others** Civil Appeal No. 147/2006(unreported).

Before dealing with the substance of this application in light of the rival submissions, I find it pertinent to restate that although the Court's power for enlarging time under Section 14 (1) of the Law of Limitation Act Cap. 89 R.E. 2002 is both broad and discretionary, it can only be exercised if good cause is adduced.

The term sufficient cause has not been defined, so as to guide the exercise of the Court's discretion in this regard. The Court must therefore consider the merits or otherwise of the reason disclosed by the applicant for failing to meet the limitation period prescribed for taking the required step or action.

Apart from valid explanation for the delay, good cause would also depend on whether the application for extension of time has been brought promptly and whether there was diligence on the part of the applicant as it was held in the case of **Benedict Mumello Vs Bank of Tanzania** Civil Appeal No. 12/2002.

The question before me now is whether the applicant has shown good cause for this court to exercise its discretionary powers to grant the application.

The main reason adduced by the applicant for the delay is that he was not aware of the proceedings of the case because he was not notified of the same. I say so because the reasons as to why he did not enter appearance when the matter was

dismissed as submitted by the applicant's Counsel are un-called for at this juncture.

The applicant has submitted that it was in July 2016 when he became aware that the suit was dismissed for want of prosecution as of 01/12/2014. He further stated that after realizing that the suit was dismissed he filed an application for extension of time to file an application to set aside dismissal order where by the same was struck out for incompetence.

Now for the applicant who was the plaintiff in the suit which was struck out stating that he was not aware for two and almost five months that his suit was struck is proof of gross negligence as he concedes that he did not make a follow up of the matter as of 1/12/2014 to July, 2016.

Moreover, he did not attach the Order issued in Misc. Land Application No. 578/2016 to prove that he was prosecuting the said application.

It is my belief that the applicant was supposed to account for each day of the delay as from July 2016 when he found out that the suit was dismissed for want of prosecution up to 02/06/2017 when he filed the instant application as held in the case of **Daudi Hanga Vs Jenitha Abdan Machanju**, Civil Reference No.1 of 2002 (unreported) unfortunately this has not been done.

In the case of **Bushiri Hassan VS Latifa Lukio Mashayo**, Civil Application No. 3 of 2007(unreported) the Court of Appeal held that; I quote;

"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

It is my finding therefore that no justifiable reason has been advanced by the applicant to constitute good cause to warrant this Court to exercise its discretion to grant an application for extension of time to file an application for setting aside the dismissal order out of time.

Having said so, the application is accordingly dismissed for want of merit with costs.


S.A.N. WAMBURA
JUDGE
27.07.2018