

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 26330 OF 2023

(Arising from Land Application No. 17 of 2022 of the High Court (Land Division) at Dar es Salaam and Originating from Land Application No.199 of 2018, Kinondoni District Land and Housing Tribunal)

GAMA JUMA GAMA APPLICANT

VERSUS

MOHAMED H. JAGWA RESPONDENT

Date of Ruling 28/02/2024

Date of the last order 20/02/2024

RULING

A. MSAFIRI, J

This is an application for extension of time within which to file application of setting aside ex-parte Judgment, in respect of the Judgment and decree of Land Appeal No. 17 of 2022 of High Court of Tanzania Land Division at Dar es Salaam before Hon. Makani, J. delivered on 26.09.2022.

The Application was made by way of chamber summons supported with an affidavit deposed by Gwantwa Richard Kasebele, advocate for the applicant.

The respondent was served by substituted service after the Court was satisfied that the service by other ways failed as he was untraceable.

Alle

The respondent was served by publication in Mwananchi newspaper dated 16.02.2024. By 20.02.2024 the respondent still did not appear in court of filed his counter affidavit hence this court ordered this application to proceed ex-parte against the respondent.

On the date of hearing, Ms Zarina Salama Nassoro, learned advocate appeared for the applicant and the hearing was viva voce. On her submission Ms Nassoro submitted on two grounds for delay. First that the applicant was not served with summons to appear for exparte judgment as it is required under Order XX Rule 1nof the Civil Procedure Code, Cap 33. That the applicant realises that there was an exparte judgment when he was served with a copy of Application for execution on 13/02/2023 from Luguruni District Land and Housing Tribunal by the respondent.

She further submitted that from there, the applicant attempted to pursue his right by filing different applications before this court including Misc. Land Application No.70 of 2023 which was struck out on technical reasons on 24/4/2023, the Misc. Application No. 275 of 2023 for extension of time to file application to set aside exparte judgment in which the applicant was granted 14 days to file the same. That the applicant complied with the order and filed Misc. Land Application No. 412 of 2023

Atts.

before Hon. Mwenegoha, J. however, that the same was struck out on 21/09/2023 on grounds that the affidavit was defective.

The counsel submitted further that the applicant made follow ups to obtain copy of the said ruling without success until on 15/11/2023 when the same was supplied to him. That after obtaining the requisite documents, from 15/11/2023 to 28/11/2023, the applicant was preparing the necessary case documents and filing them.

She prayed for the Court to grant the application. To bolster her arguments, the counsel cited the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, CAT at Arusha (Unreported).

Having gone through the submission of the applicant, it appears the applicant collected the copy of Ruling on 15/11/2023, and filed this application on 28/11/2023. From 15/11/2023 to 28/11/2023 there was a delay of almost 13 days, such delay has not been accounted for.

In addition, there is no proof that the applicant was making several follow-ups to obtain copy of ruling from this Court as he claims because it appears that the Ruling on Misc. Land Case Application No.412 of 2023 before Hon. Mwenegoha, J. was ready for collection on 21/09/2023, but

Alls.

the same was not collected until 15/11/2023, in such circumstances it cannot be said that the delay had sufficient cause.

See the case of **Benect Mumello vs. Bank of Tanzania** Civil Appeal No. 12 of 2002 the Court of Appeal of Tanzania held that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that the extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

Also the case of **Bushiri Hassan vs. Latifa Lukio Mashayo** Civil Appeal No. 3 of 2007 (unreported) the court had this to say:

"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 has to be taken."

For the above reference and observations, I see no sufficient reasons to grant the application. The application is dismissed.

No order as to costs since the application was ex-parte.

It is so ordered.



A. MSAFIRI

A. MSAFIRI

JUDGE

28/02/2024