

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC CIVIL APPLICATION NO. 401 OF 2017

MISS EMERENCIANA T. CHRYSOSTOM.....APPLICANT

VERSUS

THE BANK OF TANZANIA.....RESPONDENT

RULING

MURUKE, J.

The applicant Miss Emerenciana T. Chrysostom has applied for extension of time to file reference against decision of taxing master.

On the date set for hearing, Kelvin Kidifu represented applicant while Dosca Mutabuzi learned counsel represented respondent. Applicant counsel submitted in brief that order of the registrar was issued on 19/01/2016. Same was supplied to the applicant on 25/02/2016. Then, application for extension of time was filed on 20/06/2016. He thus requested for orders sought in the chamber summons.

In response, learned counsel Dosca Mutabuzi submitted that in an application for extension of time applicant must show sufficient cause. According to applicant affidavit, order was obtained on 25/02/2016. Current application was been filed on 21/06/2016. There is no explanation as to what happened in between. Respondent counsel insisted that, there are no reason to justify delay. Court need to be satisfied that there exist sufficient reasons for delay. In the present, application no reasons advanced by the applicant insisted respondent counsel. In rejoinder Kelven Kidefu said he had none, only repeating what he submitted earlier.

It is now settled law that in an application for extension of time under section 14(1) of Law of Limitation, applicant is required to show sufficient cause for delay. Sufficient cause would be shown for the delay in not taking the necessary steps in instituting an appeal or filing application within time prescribed by the law. The court has considerable discrenery powers under the law to grant extension.

Section 14 (1) of the Law of Limitation Act, Cap.89 R.E. 2002 provide that;

“Notwithstanding the provision of this Act, the court may for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than for execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation described for such appeal or application”.

The question is whether the applicant has shown sufficient cause for the delay.

Applicant has deponed at paragraph 8 that, he filed application within time, but withdrew the same on 6th June 2016 with leave to refile. Surprisingly, there is no evidence to that effect. It was expected, an order of withdraw to be attached to the affidavit in support of the application. Bare assertion cannot be accepted by this court. Looking at affidavit in support of the application and counter affidavit, there is no even letter requesting for copy of ruling of the taxing matter. Mere assertion that, they were supplied late, with the taxing master ruling without proof cannot be accepted.

In case of Blue line Enterprises Ltd Vs East African Development Bank Misc. Civil Cause No. 135/95 where Katiti, J. Held that:-

“It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially. Upon sufficient cause being shown which has to be objectively assessed by court”.

It was expected that applicant would make an account of time from 19th January 2016 to 20th June 2016, when application filed in order for the applicant to have the benefit of section 14 (1) as put very clear by Nsekela, J. In Misc. Civ. Cause No. 128/97, Al Imran Investment Ltd Vs Printpack Tanzania and another where it was held that:-

“Applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation”.

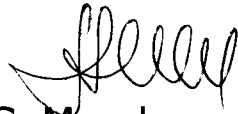
In the case at hand, applicant has demonstrated nothing to prove her delay. He has neither produced a letter showing that she applied for a copy of ruling by registrar, nor is there any account

of each day passed in follow up of the said copy at the registrar office. In Misc. Civil reference No. 14 of 1998 between Alison Xerox Sila Vs Tanzania Harbours Authority, Court of Appeal (unreported) held that:-

“Lapses, inaction or negligence on the part of the applicant seeking extension of time, does not constitute sufficient cause to warrant extension of time under section 14 (1) of the of limitation”

I have no doubt that, in all aspect the present applicant has not shown sufficient cause to warrant this court to extend time within which she can lodge the intended reference.

Thus, the application is dismissed with costs.

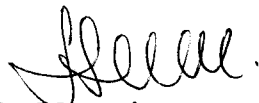


Z. G. Muruke

JUDGE

27/04/2018

Ruling delivered in the presence of Applicant in person and in the absence of respondent.



Z. G. Muruke

JUDGE

27/04/2018