

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

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 60 OF 2017**

*(Originating from Civil Case No. 426 of 2004 of the Resident Magistrate's  
Court of Dar es Salaam at Kisutu)*

**MASUMBUKO ROMAN MAHUNGA LAMWAI.....APPLICANT**

**VERSUS**

**MAJEMBE AUCTION MART LTD.....1<sup>ST</sup> RESPONDENT**

**KINONDONI MUNICIPAL COUNCIL.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

***14 December, 2017 & 2<sup>nd</sup> March, 2018***

**DYANSOBERA, J:**

In this application filed under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E.2002] and any other enabling provisions of law, the applicant is seeking against the respondents the following orders:

1. That this Honourable Court be pleased to make an order granting extension of time within which the applicant can file an appeal against the ruling and order of the Magistrate's Court of Dar es Salaam at Kisutu, Hon. A. Katemaa RM dated 21<sup>st</sup> day of March, 2012 in Civil Case No. 426 of 2004.
2. Costs of this application be provided for
3. Any other order(s) that the Honourable court may deem fit.

In support of the application an affidavit has been filed by Masumbuko Roman Mahunga Lamwai, the applicant.

The application is supported by the applicant's affidavit which is to the following effect. Under the instructions of the 2<sup>nd</sup> respondent, the 1<sup>st</sup> respondent seized his motor vehicle Reg. No. T. 988 ACR while parked at Wazo Hill. Consequent to the seizure, the applicant instituted Civil Case No. 326 of 2004 at the Resident Magistrate's Court of Dar es Salaam at Kisutu claiming some reliefs. The matter there underwent several adjournments till on 24<sup>th</sup> January, 2011. On 9<sup>th</sup> September, 2011 the court dismissed the suit for being out of time, there being no application for departure of the scheduling order.

Following the dismissal, the applicant made an application for review but the application was dismissed on non-citation of the enabling provisions of law. Later, the applicant, upon application was supplied with a copy of ruling with no copies of proceedings and order which made him fail to file a competent appeal.

The record, however, went missing until on 10<sup>th</sup> February, 2017 when he eventually got the copies of proceedings and order. The applicant told the court that he could not get affidavits from Messrs. Magesa and Arufani.

It is contended for the applicant that his lateness in filing the appeal is not out of negligence but was due to the failure to get necessary documents despite his efforts. The applicant maintains that the dispute remains unresolved as the 1<sup>st</sup> respondent is still holding the said car.

In his counter affidavit, the 2<sup>nd</sup> respondent's Solicitor noted paragraphs 4 and 6 of the applicant's affidavit. He, however, denied the contents of paragraph 2 and averred that the applicant's motor vehicle was towed for being wasted at an area not designated as a car washing bay. As to the contents of paragraph 3, it was disputed that during the towing there was any manuscript in the motor vehicle. Strongly disputing the contents of paragraphs 5 and 13, the

Municipal Solicitor stated that the applicant was negligent to prosecute his case as a result it was correctly dismissed by the court. On the contents of paragraph 7 which were also disputed, it was contended that the memorandum of review was correctly dismissed for not complying with the legal procedures of citing the enabling provision of law. The contents of paragraphs 8, 9,10,11,12 and 14 of the applicant's affidavit were also disputed. It was averred for the 2<sup>nd</sup> respondent that the applicant was negligent in handling his matters by non-following up of the documents from the court, that the applicant could get the affidavits of those officers who are residents of Dar es Salaam and his failure is to try to shield his negligence by blaming other people and lastly, that his application was correctly dismissed upon his negligence. He concluded that the application is an abuse of the court process.

The 1<sup>st</sup> respondent, it seems, did not file any counter affidavit. This application was heard in writing.

Supporting the application, Ms Mary M. Lamwai, learned counsel submitted that the applicant is aggrieved by the way learned Resident Magistrate handled the case and has at all material times been interested in seeking a remedy by way of appeal to the High Court. Citing p. 10 of the proceedings, learned counsel told this court

that the trial court acted illegally as he had no power to dismiss the suit whose speed track period expired. She admitted that the review filed against the dismissal order was struck out. The delay is therefore, attributed to the illegality, and delay in being supplied with copies of proceedings and order. It is contended that the applicant was not notified of their ability and that he made a personal follow up. Counsel for the applicant maintains that there is sufficient cause shown.

Replying to the written submission, Mr. Xavier M. Ndalaha, Municipal Solicitor contended, in main that no sufficient cause has been shown for extension of time. He told this court that there was laziness on part of the applicant, the application having been brought after five years. He concludes that the delay is inordinate and inexcusable.

In a rejoinder, counsel for the applicant told this court that the 2<sup>nd</sup> respondent's counsel does not seriously contest the fact that the court premises were being renovated and the magistrate who made the decision was transferred leading to the misplacement of the file. That the applicant has assigned good reasons why he could not obtain the affidavits of Hon. Magessa and Hon. Arufani. Further that the respondent has not negated the facts that caused the delay in

getting the proceedings and that the 2<sup>nd</sup> respondent has miserably failed to resist the application.

From the record and the submissions, there is no dispute that the applicant's suit against the respondents which he had filed in the Court of a Resident Magistrate of Dar es Salaam at Kisumu as Civil Case No. 426 of 2004 was dismissed on 9<sup>th</sup> September, 2011. It is also not disputed that the memorandum of review of the dismissal order was dismissed on 21<sup>st</sup> day of March, 2012. Before me there is this application for an extension of time within which the applicant can file an appeal against the ruling and order of the Magistrate's Court of Dar es Salaam dated 21<sup>st</sup> day of March, 2012

I have considered the affidavits in support of the application and the submissions of both sides. As stated above, this application has been filed under section 14 (1) of the Law of Limitation Act which provides as follows::

**4.-**

**(1) Notwithstanding the provisions 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 an application for the**

**execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.**

**(2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application.**

The issue now is whether the grounds adduced in the applicant's affidavit and the submission in support of the application constitute sufficient cause for extension of time.

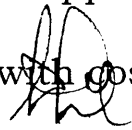
The fact that there was a delay in obtaining copies of proceedings and order has not been disputed. The applicant, however, admits that he was supplied with a copy of ruling of the court delivered on 21<sup>st</sup> March, 2012. Undoubtedly, it cannot be assumed that the applicant took prompt measures in filing the application for extension of time. It was not suggested that it was a legal requirement for the filing of such application, copies of order and proceedings were a mandatory requirement and that after getting the copy of ruling, the applicant filed the application but the application failed on account of failure to attach copies of order and proceedings. I have no doubt that the delay was not beyond the

applicant's convenience and I am not convinced that the delay was not a cause of his own making. The court in the case of **Royal Insurance Ltd v. Kiwengwa Strand Hotel Ltd**, Civil Application No. 116 of 2008 (unreported) observed:

**“It is trite law that an applicant before the court must satisfy the court that since becoming aware of the fact that he is out of time acted very expeditiously and that the application has been brought in good faith”.**

Indeed, I am satisfied that the applicant's reasons for the delay were not reasons beyond control of human being. The reasons for the delay were within his control.

In the final analysis, I find the application for extension of time lacking in merit and I dismiss it with costs to the 2<sup>nd</sup> respondent.

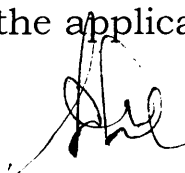


W.P. Dyansobera

JUDGE

2.3.2018

Delivered this 2<sup>nd</sup> day of March, 2018 in the presence of Mr. David Pongolela, learned counsel for the applicant but in the absence of the respondents.



W.P. Dyansobera

JUDGE