

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 345 OF 2016

(From Civil Revision No. 27 of 2014 originated from Temeke

District Court in Matrimonial Cause No. 40 of 2008)

JOSHUA YUDA KATANGA.....APPLICANT

VERSUS

MARIAM KUBEJA.....RESPONDENT

RULING

MKASIMONGWA, J.

JOSHUA YUDA KATANGA, applies to the court for an order extending time for him to apply to set aside the dismissal order dated 20/4/2014 in Civil Revision No. 27 of 2014. The Application is by way of Chamber Summons filed under Section 14 (1) of the Law of Limitation Act [Cap. 89 R. E. 2002] and Section 93 of the Civil Procedure Code [Cap. 33 R.E. 2002] and it is supported by the Affidavit sworn by the applicant.

The application is resisted by the Respondent one MARIAM KUBEJA. The latter, has filed a Counter Affidavit. When the application came up for hearing there appeared before me Mr. Mohamed Mkali and Mr. Msigwa learned advocates representing the Applicant and Respondent respectively. In his submission Mr. Mkali contended that on 20/4/2015 this court dismissed a Civil Revision No. 27 of 2014 for want of prosecution.

Following the order dismissing the Revision, this application is brought to the court. The Application is filed under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2002]. The reasons for the application have been clearly stated in the applicants affidavit filed in support of the application which Mr. Mkali prays to adopt to be part of his submissions. Mr. Mkali stated that why the applicant could not file the application in time is because he was not aware of the dates when the matter was called to court. He was even not aware of the date of the contested order so he was not present in court. He became aware of the court order sometime on 27/5/2016 when time within which to file the Application had already expired. Mr. Mkali submitted that in the circumstances of this case there was reasonable cause why the Applicant did not timely for extension of time. As such, the learned advocate prays the court that the application should be granted with costs.

On the other hand Mr. Msigwa submitted that cases filed in court pass through filing, hearing, determination and execution stages. The applicant did file in this court Revision proceedings. Being the applicant he was obliged to make follow up of his matter for him to know its status in court. One cannot successfully tell that, from 5/8/2014 when the Revision proceedings were dismissed for want of prosecution to 27/5/2016 when the Applicant became aware of the order which is almost 21 months period, he was not aware of the status of his matter in court. In this matter the Applicant was not diligent and that is why he does not tell any efforts taken by him to know the status of his case instituted in court. The allegation that the applicant was not informed of the dates the case was

called to the court and that of ruling does not constitute a reasonable or sufficient reason.

Secondly Mr. Msigwa contended that the Applicant intends to apply for restoration of proceedings dismissed for want of prosecution. He submitted that restoration of proceedings is capable of being sought only where there was an ex-parte hearing. Where the party challenges the order dismissing proceedings for want of prosecution, he may do so by seeking a review of the order or paving way for appeal. Based on his submissions, Mr. Msigwa prays the court that the application be dismissed with costs.

In a short rejoinder, Mr. Mkali submitted that, it seems his learned friend has misconceived the matter. It is submitted by his learned friend that the application was not made in 21 months. The contested decision/order of the court was made on 20/4/2015 and this application was filed on 2/6/2016. Secondly in is like applications the applicant is required to show that there was a sufficient cause as to why the application could not be made within the prescribed time. In this case the applicant has shown sufficient and/or reasonable cause why he could not make the application within the prescribed time. The applicant could not make the application before when he became aware of the contested decision.

As to the second ground, Mr. Mkali contended that this is just an application for extension of time in which to apply for an order setting aside a dismissed order reached from the applicant's non-appearance and

that the application for the order has not been filed in court. As such his friend's submissions have been prematurely made for there is no the matter filed in court. He added that this is not a matter for which they consider fit for for Review or Appeal. The Application at hand is brought under Section 14 (1) of the Law of Limitation Act, [Cap 89 R.E. 2002]. For that reason the submissions made by his learned friend have been misplaced. Mr Mkali prays the court that it finds no merit in them and therefore this application should be granted.

That is all what was submitted by the respective advocates representing the parties. Going by the Affidavit filed in support of the Application, Counter Affidavit and submissions, it is clear to the court the applicant had sometime come to the court and instituted a Civil Revision No. 27 of 2014 challenging the decision of Temeke District court in Matrimonial Cause No. 4 of 2008. To be exact a Civil Revision No. 27 of 2014 was filed on 5/8/2014. The same was however dismissed on 20/4/2015 for non-appearance of the applicant. The latter seems to be aggrieved by the order and he intends to apply to the court that the same should be set aside and the proceedings restored. Caught by the time limitation the applicant has first come with this applications which is filed under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2002]. The section reads as follows:

"Notwithstanding the provision of the 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

decree and an application for such extension may be made either before or after the expiry of the period of limitation for such appeal or application”.

The section vests in courts discretionary powers to extend the period of limitation for the institution of an appeal or an application. The court may exercise such powers only upon being satisfied that there is a reasonable or sufficient cause. In the case at hand the Applicant shows that he could not timely apply for the order intended for he was not aware of the status of the matter that there was an order dismissing it for want of prosecution. This is because he was not notified of the dates of hearing of the case and date of the order. The issue therefore, is whether this ground amounts to a sufficient cause? In the case of **Tanga Cement Company Limited vs Jamanne D. Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2001** whose decision was adopted by the Court in the case of **Benedict Mumello vs Bank of Tanzania, Civil Appeal No. 12 of 2002**, our superior court, the Court of Appeal of Tanzania had this to say:

"what amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly, the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant”.

There is no hard rule by which to determine as to what amounts to a sufficient cause. It depends on the circumstances of each case for the court to rule out whether or not there is sufficient cause exhibited by the applicant. In the case at hand the applicant intends to seek for restoration of Revision proceedings dismissed for want of prosecution on 20/4/2015. He contends that it is until on 27/5/2016 when he became aware of the order and therefore lodged this application on 2/6/2016. It is about 13 months from when the Revision case was dismissed to when the application became aware of the order. As said by Msingwa this evidences the fact that although the applicant had a matter in court, he did not for 13 months make a follow up to ensure the same is prosecuted. This is a clear case in which the applicant was not diligent. Lack of diligence on the part of the Applicant erodes that which entitle him extension of time for a sufficient cause is not established under such circumstances.

Based on this finding above, I find no merit in this application and it is consequently dismissed with costs.

Dated at Dar es Salaam this 2nd of May, 2018.


E. J. Mkasimongwa
JUDGE
02/05/2018