

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

**MISC. CIVIL APPLICATION NO. 279 OF 2019**

(Originating from Civil Review No. 3 of 2018)

**LUDGER BENARD NYONI ----- APPLICANT**

VERSUS

**NATIONAL HOUSING CORPORATION ----- RESPONDENT**

**RULING**

**MUTUNGI, J.**

The applicant has filed the instant application on the following grounds: -

1. *That this honourable court be pleased to grant leave for extension of time for the applicant to file an application for restoration of Civil Review No. 3 of 2018 dismissed by Hon. Mutungi, J.*
2. *Any other relief(s) the court may deem fit and just to grant.*
3. *Cost of the application be provided for.*

The application has been filed pursuant to order IX Rule 9 and section 68 and 95 of the Civil Procedure Code and section 14 (1) of the Limitation Act, Cap 89 of 1971 and any other enabling provisions of law. The applicant in support thereof has also filed a corresponding Affidavit duly deponed by him. On the other side of the coin, the respondent did enter appearance and was duly represented by Mr. John Laswai.

The respondent prayed to file a Counter – Affidavit to contest the application. They were granted their prayer and ordered to file the same. For some unknown reasons to the court, the respondent never filed their Counter – Affidavit nor did they attend the court sessions thereafter. It was thus ordered by the court that, the applicant to file his written submission thereof in support of the application.

Reading through the Affidavit and applicant's written submission in support of the application, it is gathered that the application had since its inception assigned to Hon. Muruke, J. Thereafter following her transfer to another duty station the same was re-assigned before Hon. John Mgetta and was to be mentioned on 06/11/2016. When the day

arrived (06/11/2016) the parties were informed the said Judge had been transferred thereof to the High Court (Land Division). The parties went looking for him and when they came back they learnt the case had been re – assigned once again before Hon. Mutungi, J (myself) and had already been adjourned to 03/12/2016 for mention. Unfortunately, the applicant was admitted and could not appear before the court (Muhimbili National Hospital).

The matter was yet fixed for mention on 25/02/2019, fate had it, that on the set date he had also been admitted and underwent a complicated operation. Prior to this date he had visited the court and specifically spoke to the court clerk and the Deputy Registrar (15/2/2019) of his inability to attend on the set date. To his surprise the court on 25/2/2019 dismissed the review application for want of prosecution. The foregoing notwithstanding, he had received the copy of ruling late, the reason why he is now seeking for extension of time to file an application to restore the review application.

It is trite law that for the court to entertain such an application, it should be satisfied that, the applicant has demonstrated sufficient causes.

This condition is provided for under section 14 (1) of the Law of Limitation Act, Cap. 89 and for ease of reference it states: -

**“(1) Notwithstanding the provision of this Act, the court may for any reasonable or sufficient cause extend the period of limitation for the execution of a decree, and an application for such extension may be made either or before the expiry of the period of limitation prescribed for such appeal or application.**

Further, the court is alive of the dictates of law that extension of time is the discretion of the court. In the case of **BERITHA BWIRE V. ALEX MAGANGA, CIVIL REFERENCE NO. 7 OF 2016 (CAT – DSM) (UNREPORTED)** the court had this to say;

*“It is trite that, extension of time is a matter of discretion on the part of the court and that such discretion must be exercised judicially and flexibly with regard to the relevant facts of the particular case”.*

What then are the relevant facts in this application. The applicant alleges he was sick (admitted) at the time the application was dismissed and that he had notified the court through the court clerk and the Deputy Registrar. The court has gone through the Affidavit and finds there no proof of such encounter having taken place. It was expected of the applicant to have either attached the court clerk's or Deputy Registrar's Affidavit to this effect.

The applicant has raised the issue of sickness and stated that he had attached the medical record to support his words. The court has painstakingly perused through the application and found no trace of such document in the file nor attached to the application. It was upon the applicant to prove to the court that before the case was called he had been admitted at Muhimbili National Hospital.

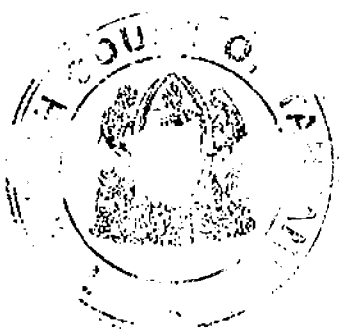
The applicant has alleged that he received the copy of the ruling late, but does not state when he did receive the said ruling and what caused the delay in getting the same. The time factor in such an application is of utmost importance. The court should be in the position to see and value the days delayed. The same was amplified in the case of

**BUSHIRI HASSAN V. LATIFA LUKIO MASHAYO, CIVIL APPLICATION NO. 3 OF 2007 (UNREPORTED)** which cited in the case of **SAFARI PETRO V. BOAS TEMU (CAT), CIVIL APPLICATION NO. 320 OF 2017 (CAT – ARUSHA)** that;

*“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”.*

Not only is it that the court does not know when the applicant received the ruling but it cannot also project the length of delay. In view of the foregoing scenario found in this application, the court has not been sufficiently moved to do that which it is asked to do.

In the upshot the application is dismissed for want of merits, considering the applicant's age the same is with no costs.



**B. R. MUTUNGI**

**JUDGE**

**23/10/2019**

Ruling read this day of 23/10/2019 in presence of the applicant and Oliver Matole for Aloyce Sekule for the Respondent.

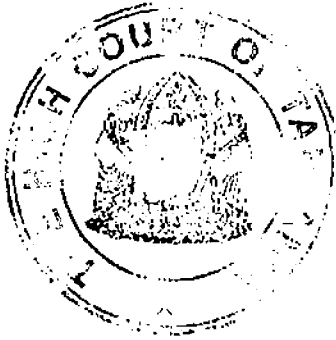


  
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Right of Appeal Explained.



  
B. R. MUTUNGI

**JUDGE**

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