

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 121 OF 2017

(Arising from Land Appeal No. 68 of 2009 HC. Mwanza, original District Land and Housing Tribunal of Tarime in Land Case No. 128 of 2008)

EMMANUEL KANISIUS BARITIRE APPLICANT

VERSUS

1. MARWA NYAHOSU

2. BONIFASI NYAHOSU RESPONDENTS

RULING

25/09/2018 & 31/01/2019

RUMANYIKA, J.:

The application for extension of time within which to apply for setting aside the 11/08/2011 dismissal order on appeal, for want of prosecution issued is brought under Section 14 (1) of the Law of Limitation Act, Sections 51 (1) (b) and 52 (2) of the Land Disputes Courts Act, Order XLIII Rule 2 of the Civil Procedure Code Chapters 89, 216 and 33 R.E. 2002 respectively. It is supported by affidavit of Emmanuel Kanisius Baritire. Whose contents essentially, the applicant herein adopted during the hearing.

Like the applicant, Marwa Nyahosu and Bonifasi Nyahasu (the 1st and 2nd respondents) respectively appeared in person.

The applicant, in a nutshell submitted that this court (Mwakipesile, J., as she then was) having dismissed the appeal on 11/08/2011 for want of prosecution, but he wasn't aware of the matter coming, the appellant immediately, but between years 2009 and 2010 remained back taking care of a father now involved on a car accident. Then he (appellant) was on 05/06/2013 involved in a motor bike accident. Whereby was discharged just on the next day. But remained not that ok until two (2) years later (copies of medical chits "annexture "E").

That again there was a point of illegality. Namely the 1st appeal court declaring the respondents lawful owners. Not only of crops but also owner of the disputed land.

Questioned by this court, the applicant submitted that he used to following up his appeal only at the DLHT until year 2017. When respondents appeared executing the decree.

The respondents were at one and essentially submitted that the applicant may have had faced the predicaments, but did not communicate it to the court. That he could not have surfaced until such time they were executing the decree.

The issue, and it is trite law is whether the applicant has assigned any sufficient ground for extension of time. The answer is no. Reasons are:-

One; he lodged the present application about six (6) years after his appeal was dismissed by this court for want of prosecution on 11/08/2011.

Two; he may have, between 2009 and 2010 been attending a sick father yes! But he did not, in his supporting affidavit tell when exactly he (applicant) was done.

Three; he did not tell how alone, if at all, was, for the whole year engaged attending to the sick father.

Four; he may have had, upon being relieved from attending to the sick father, also involved in a motor bike accident and remained not fine for two good years. Fine! But now that if at all he was, by June, 2015 fine, why then lodging the application two(2) years later, according to records on 15/06/2017.

Five; what a coincidence that after had, for one year been attending to the sick father, two years back personally not fine due to a motor bike accident, but the respondents were now executing the decree, he lodged the applications!

Six; he did not give account for each day, say of the six (6) years delay. There is no wonder that the applicant woke up only after the respondents started to execute the decree.

It is very unfortunate that for not less than six (6) years now, the respondents had not enjoyed fruits of their judgment and decree.

There isn't any points of illegality to warrant extension. As copy of the impugned decision wasn't attached to enable me appreciate the point.

Application is dismissed with costs.

Right of appeal explained.


S.M. RUMANYIKA

JUDGE

26/01/2019

Delivered under my hand and seal of the court in chambers this 31st
day of January, 2019 in the presence of both parties in person.




O.H. Kingwele

DEPUTY REGISTRAR

31/01/2019