

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

MISC. CIVIL APPLICATION NO. 251 OF 2019

SAID MUSSA MAKOLELA APPLICANT

Versus

LILIAN JOHN MOSHA.....1ST RESPONDENT

SAMWEL MOHAMED CHALLA.....2ND RESPONDENT

FLAMINGO AUCTION MART.....3RD RESPONDENT

Date of last Order: 11/9/2019

Date of Ruling: 25/10/2019

R U L I N G

MGONYA, J.

Before the Court is an Application for extension of time within which the Applicant to file an Appeal out of time. The Application made under **Section 25(1) (b)** of the **Magistrates Courts Act, Cap. 11 R.E. 2002** and section n **14(1)** of the **Law of Limitation Act Cap. 809 [R. E. 2002]**.

The Application is supported by the Affidavit sworn by the Applicant one **SAID MUSSA MAKOLELA**.

With the leave of the Court the Application was disposed by way of written submissions.

Inter alia, the Respondents herein, have filed a Counter Affidavits bitterly challenging the Application.

In support of the Application, the Applicant contended that the reason for the delay to file an Appeal within time was due to sickness that he attained immediate after the Revision at Temeke was out. Out of that sickness, he was not in a position to make a close follow up of the matter in that respect. However, after he was at least well, he made all possible to get a legal assistance to attend this application. In support of his allegation, the Applicant attached his medical supporting documents to justify what he alleges.

Further the Applicant submitted further that, the chance of success is huge since the disputed house was sold under some irregularities and without his consent. He therefore prayed for the Application to be granted as prayed.

In response, both Respondents have vigorously objected the application saying that the Applicant was negligent in perusing his appeal. On one hand, the 1st Respondent is further of the opinion that, since the Applicant was not admitted for treatment, he was supposed to take up his matter to another level or use someone

in that; while the 2nd Respondent is of the view that the submitted medical treatment are cooked ones. They both prayed this court to dismiss the application for the above stated reasons.

Before dealing with the substance of this application, I find it pertinent to restate that although the Court's power for enlarging time under **Section 25(1) (b)** of the **Magistrates Courts Act, Cap. 11 R. E. 2002** and **section n 14(1) of the Law of Limitation Act Cap. 809 [R. E. 2002]**, is both broad and discretionary, it can only be exercised if good cause is advanced.

Apart from valid explanation for the delay, **good cause** would also depend on whether the Application for extension of time has been brought promptly and whether there was diligence on the part of the Applicant.

The question now is whether the Applicant has shown **good cause for this Court to exercise its discretionary powers to grant the application.**

According to the facts stated in the Affidavit and the submission in support of the Application; the Applicant's Counsel advanced sufficient reason for the delay in filing the Appeal in time. There was an effort shown to make sure that the Appeal intended was filed under the prescribed time as seen in the Affidavit in support Application with its annexures thereto of which supported the Applicant's sickness.

As said earlier, this Honorable Court will grant such Applications where sufficient causes have been adduced. In the case of ***BENEDICT MUMELLO VS BANK OF TANZANIA CIVIL APPEAL NO. 12 of 2002*** the court held inter alia that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

The term sufficient cause has not been defined. However, in the case of ***YUSUPH SAME AND HAWA DADA VS HADIJA YUSUF CIVIL APPEAL NO 1 OF 2002***, the Court of Appeal elaborated on the term of sufficient cause:

"That it should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking necessary steps".

Going through the Applicant's Affidavit and the submission in respect of the Application at hand, and the annexures that have been annexed to Applicants Application, it came to knowledge that the Applicant's health deteriorated immediately after the sale of his house and worsened following the outcome of the Revision at the Temeke District Court, hence serious health problems. The

medical reports attached to the Applicant's Affidavit states it all, though this fact has been vigorously objected by the 1st Respondent for the reason that there is nowhere indicating that the Applicant was admitted for treatment. On this, I would like to state that, the sickness of a person does not necessarily oblige him/her to be admitted in hospital. Sickness is the fact which can be treated anywhere, be it at hospital admitted, at home or at the traditional healer as the case may be. What is needed is the capacity and good health to be able to attend into other matter such like litigation is what needed. In this case, the Applicant showed some evidence of his treatment attendance stating under oath that he was not able to attend into his other matters, the case which the court has taken into consideration.

The above being a good cause of delay, and taking into consideration that the court has looked into the lower court's decisions of which are subject to Appeal, this court is satisfied that before the Court, justifiable reason have been advanced by the Applicant to constitute good cause to warrant this Court to exercise its discretion to extend the time within which to file an Appeal out of time. The Applicant did show diligence in making effort to file the Application for the sake of obtaining justice. In the event therefore, and after going through the records of the

lowers courts. I see that there is a need for the Applicant to pursue his Appeal as intended as it is his legal and Constitutional right.

Having said so, **the Application is accordingly allowed and each part to bear own costs.**

It is so ordered.



L. E. MGONYA

JUDGE

25/10/2019

COURT: Ruling delivered in the presence of the Applicant, 1st Respondent and 2nd Respondent in persons, and in the absence of the 3rd Respondent in my Chamber today 25th October, 2019.



L. E. MGONYA

JUDGE

25/10/2019

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

AT DAR ES SALAAM.

CIVIL CASE No. 195 OF 2017

**M. M. INDUSTRIES LIMITED PLAINTIFF
VERSUS
JASSIE & COMPANY LIMITED DEFENDANT**

10/10/2010

Coram : Hon. Mgonya, J.
For the Plaintiff : Absent
For the Defendant : Absent
Court Clerk : Emma

O R D E R

I have noted from the record that, the suit before the Court was left unattended as from **17/07/2018** to this date. This is the 7th call where neither the Plaintiff nor the Defendant have entered appearance before this Honourable Court.

This matter cannot be left unattended forever. It is for that matter, I have seen it wise to **DISMISS** this suit for **WANT OF PROSECUTION.**

It is so ordered.



L. E. MGONYA

JUDGE

10/10/2019