

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 303 OF 2019**

LINGO MILELE HAULE..... APPLICANT

VERSUS

REGINALD P. MUSHI.....RESPONDENT

Date of last Order: 21/02/2020

Date of Ruling: 13/05/2020

R U L I N G

MGONYA, J.

In this application the Applicant, moves the Court under the provisions of **Section 14 (1) of the Law of Limitation Act Cap 89 [R.E. 2002]**, for the Court to extend time to file an Application for Revision out of time.

The Application is in support of an Affidavit sworn by the Applicant herein **LINGO MILELE HAULE**. The Applicant in the Application also prays that this Honorable Court make any other order this Court deems fit and just to grant.

While the matter was scheduled for hearing the Applicant prayed before the Court that the matter be disposed of by way of written submissions and the court granted the prayer.

It is the Applicant's submission that on the **16/08/2006** the Kinondoni District Court delivered judgment against him and that the Applicant was supposed to file an application for revision within 60 days from the date of judgment.

Further the Applicant states that he has availed the reasons for his delay to have filed the application under **paragraph 2, 3, 4, 5, 6 and 7** of the affidavit. He averred that **Civil Case No. 38/2004** decision was delivered on **16/08/2006** and the matter was heard in his absence. He became aware of the decision in the year **2007** and immediately reacted to the decision by a letter to the principal Resident Magistrate in charge of Kinondoni District Court. The matter was assigned to another Magistrate who informed the Applicant that the file was taken to the high court for directives.

The applicant also averred before this court that in follow up of the file it was later located at Kisumu Resident Magistrate Court. It was noted that the Magistrate that had preceded over the

matter was the same that heard the case over ownership and his follow up over the case was unsuccessful.

The Applicant submits that the matter before this court is whether the Applicant has narrated sufficient good cause to be granted the prayer sought under the provisions of **section 14 (1) of the Act (Supra)**. All that is required is sufficient causes for failure to have filed the application in time. The Applicant in support of his argument cited the case of ***MOBRAMA GOLD CORPORATION LTD VS. MINISTER FOR EBERGY AND MINERAL, AND THE ATTORNEY GENERAL, AND EAST AFRICA GOLDMINES LTD AS INTERVENOR, TLR (1998), 425; ELIBARIKI ASSERI VS SHIFAYA MUSHI & LEWANGA KINANDO (1998) T.L.R. 81.***

Moreover the Applicant states to have averred in his affidavit that there is a serious illegality heard and determined by the Kinondoni District Court in **2004** while the matter was a land matter and was supposed to be channeled to Land Courts. Further, there is an issue of conflict of interest as the Magistrate that heard the matter was the same that presided over the matter. The Applicant cited the case of ***PRINCIPLE SECRETARY, MINISTER OF DEFENCE & THE NATION***

SERVICES VS D.P VALAMBIA (1992) T.L.R CAT AT DAR to support his argument. The Applicant prays that this Application be granted with cost and any other relief the court deems fit to grant.

In reply the Respondent submitted that the Applicant neither accounted for each day of delay, nor explained what or why he delayed. Respondent stated that, It is trite law that discretion to extend the time is Judicial, and not according to private opinion or arbitrarily; the Respondent states that this principle was from the case of ***LYAMUYA CONSTRUCTION COMPANY LIMITED VS BOARD OF TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA CIVIL APPLICATION NO. 2 OF 2010.***

It is the Respondent's assertion that the Applicant has not stated sufficient reasons for his delay. It is the Applicant submission that the reasons for delay appear under paragraph **2, 3, 4, 5, 6,** and **7** of the affidavit. The Applicant submits to have come into knowledge of the decision in **2007** he omits the exact date and month and rather rests his case in the year 2007, but this Application was filed exactly on the **12/04/2019 twelve years** from the time the decision was delivered. It is the

Respondent's claim that the delay is an excusable. Respondent further averred that the Applicant stated to have failed to apply for revision for he was not aware of the decision, the fact which contradicts his earlier statement that he became aware of the decision in **2007**. The Respondent is of the view that the Applicant is not serious for not fixing his reasons in time and in so doing fails to account for each day.

The Respondent contends that the delay by the Applicant is inordinate and that the execution of the decision was done 10 years ago. Extending time to Applicant will make the Respondent suffer. Further, the matter of conflict of interest was also tackled by the honorable Judge Incharge of Dar es Salaam zone and settled; while on matters of jurisdiction the District Court still had jurisdiction since the institution was not in place at that time, although the **Land Act No. 2 of 2002** and its regulations was already enacted.

It is from the submissions above that the Respondent prays that this matter be dismissed with costs.

In determining the application at hand the court has considered the affidavits, annexures, written submissions and all

cited cases in the parties' written submissions. Having considered what has been presented, I find the main issue for consideration and determination is whether the Applicant has shown the good cause to warrant extension of time to file revision.

The Courts power under section **14 (1) of the Law of Limitation Act Cap. 89 [R.E. 2002]**, is not only discretionary but also is to be exercised judicially. Before I venture to determine this application, I find it apt echoing the benchmarks expressed in ***LYAMUYA CONSTRUCTION CO. LTD VS. REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION No. 2 of 2010 (unreported)***, that the court before grant or refuse application of this nature should be guided with the following;

- (a) Applicant must account for all period of delay;***
- (b) The delay should not be inordinate;***
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and***
- (d) That there are other sufficient reasons, such as the existence of a point of law of sufficient***

importance; such as the illegality of the decision sought to be challenged.

In consideration of the afore guiding principles, the application at hand, reasons advanced as captured from both the affidavit as well as written submission are as they respectively appear under paragraph **2, 3, 4, 5, 6** and **7** of the affidavit.

The Applicant has stated that the matter was heard *ex parte* against him hence an *ex parte* judgment was delivered and that he came to find the existence of the *ex parte* judgment in **2007**. The Applicant has not explained before this court as to why the matter was heard *ex parte* against him in the first place.

The Applicant knowing that he was the Defendant in **Civil Case No. 38/2004** was immediately required to have made an application before the same court seeking for an extension of time to file an application to set aside an *ex parte* judgment and not writing letters to the Magistrate. The letter attached to the application is more of an administrative letter rather a letter I expected for seeking copy of judgment for use of filing an application.

It is trite law that when a party to a suit is not satisfied to a decision of the court, the remedies available are an **Appeal, Revision or Review**. These are the legal remedies available and known before the eyes of law. The acts of the Applicant were misleading and misconceived and hence a burden upon him.

The Appellant seeking for an extension of time has the duty to meet the principles as enshrined in the case of **LYAMUYA CONSTRUCTION CO. LTD VS. REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION No. 2 of 2010 (unreported),(supra)**.

Apparently, extension of time is at the discretion of the court; this was stated in the case of **BENEDICT MUMELLO VS. BANK OF TANZANIA, CIVIL APPEAL NO. 12 OF 2012** the court held that inter alia;

"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".

Further it is also the requirement of the law for one to satisfy the court that there are reasonable or sufficient cause, to extend the period prescribed in law for application of extension of time to be granted. It is crystal clear in law that sufficient reason is a pre condition for the court to grant extension of time. This is the position in the case of ***ENTERPRISES LTD VS. EAST AFRICAN DEVELOPMENT BANK, MISC. APPLICATION NO. 135 OF 1995 WHERE KATITI, J*** (as he then was) held that:

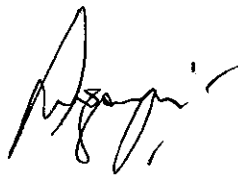
"It is the law that extension of time must be for sufficient cause and cannot be claimed as of right, that the power to grant this concession is discretionary which is to be exercised judiciously. Upon sufficient cause being shown this has to be objectively assessed by the Court."

The actions taken by the Applicant from the time the Judgment was delivered to the present application cannot be said did in any way take serious measures in seeking to apply for revision. The Applicant however in the application has not accounted on each day of delay as required by law. From the **year 2007** when the judgment came to his knowledge to **07/06/2019** what really transpired? It is of my firm view that

there is no sufficient cause to move this court to warrant the extension prayed.

Having said the above, **this Application is dismissed with costs.**

It is so ordered.



**L. E. MGONYA
JUDGE
13/05/2020**

Court: Ruling delivered before Hon. Kisongo, Deputy Registrar in chambers in the presence of the Respondent in person and Ms. Janet RMA, this 13th day of May, 2020.



**L. E. MGONYA
JUDGE
13/05/2020**