

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

MISCELLANEOUS CIVIL APPLICATION 574 OF 2019

(Arising from Kinondoni District Court, Case No. 54/2015)

MATHIAS E. HANAI

APPLICANT

VERSUS

CDH FINANCE COMPANY LIMITED -----

RESPONDENT

RULING

Date of last order: 09.06.2020

Date of Ruling: 19.06.2020

Ebrahim, J.:

The applicant herein has filed an application to be extended time to lodge an appeal before this court against an exparte judgement and decree of the District Court in Civil Case No. 54 of 2015 dated 11th June 2015. The application has been preferred under the provisions of **section 14(1) of the Law of Limitation Act, Cap 89 RE 2002;** and it is supported by an affidavit of Mathias Ephreim Hanai, the Applicant.

The applicant borrowed Tshs. 10,000,000/- from the respondent in January 2015. The repayment period was three (3) months and security for the loan was the applicant's bus. The applicant averred further that in the course of

business he went to Tabora where his motor vehicle got stuck in the mud which took a considerable time to pull it out. On pulling it out the motor vehicle got damaged. When he got back, the respondent had already secured an ex parte judgement which he unsuccessfully applied to have it set aside in Miscellaneous Civil Application No. 87 of 2016. He averred further that in June 2016, while in Arusha he was admitted at Mount Meru Hospital until October 2019 when he returned to Dar Es Salaam to find that execution proceedings have taken effect.

When the matter was called for hearing, the applicant was represented by Mr. Joseph Sang'udi learned advocate. Mr. Yesaya David Shumi appeared for the respondent as the Managing Director of the Company.

Submitting in support of the application, Counsel for the applicant adopted the contents of their affidavit to form part of the submission and told the court that the main reason for the delay was that the applicant was admitted in a hospital. He stated further that when the applicant was preparing to pay the loan he travelled to Tabora and fell sick and the car broke down. When he came back he found there is ex parte judgement. He admitted that they do not have original certificate. He prayed for extension of time be issued by the court.

In responding to the submission by the Counsel for the applicant, the Respondent adopted the counter affidavit and told the court that it is not true that the car went to Tabora because they have original card. He stated also that the applicant used a copy of the card to obtain another loan from ABC Bank and the car is at Tanga sold by the Bank. As for the averment at para 10 that the applicant was admitted at Mount Meru Hospital, the respondent told the court that according to the records at Mount Meru hospital, there is no such patient. He prayed for the application to be dismissed with costs.

In rejoinder, Counsel for the applicant reiterated what he submitted earlier.

Section 14(1) of the Law of Limitation Act, Cap 89 RE 2002 gives powers to the court to extend time when prescribed time by law has lapsed upon the party showing sufficient or reasonable cause - **Michael Lessan Kweka V John Eliafye** (1997) TLR 152 (CA). A number of authorities have explained the meaning of sufficient or reasonable cause to mean that a party must show that the delay was not caused by his dilatory conduct, out of negligence, disinterest or lack of diligence. The courts went further to explain that the sufficient reason must relate to inability to take particular step in time— see the case **Mugo and Another V Wanjiru and Another** (1970) EA 481 cited in the case of **Martha Daniel V Peter Thomas Nko**

(1992) TLR 359. Moreover, the applicant must also account or have an explanation for each day of delay - **Al Imran Investment Ltd V Print Park Tanzania Ltd and Another**, Misc. Civil Cause No. 128 of 1997 (unreported).

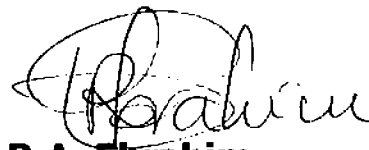
Coming to our instant application Counsel for the applicant said that the main reason for the delay was that the applicant fell sick and was admitted. He said also that the applicant went to Tabora but when he came back he found exparte judgement has already been issued.

Exparte judgement was delivered on 6th November 2015. It was not until 8th April 2016 when the applicant unsuccessfully applied to set aside exparte judgement.

Going by the applicant's affidavit there is nowhere that he provided the date within which he travelled to Tabora or to Arusha so as to be able to ascertain as to when he travelled after the delivery of exparte judgment. As intimated earlier, the judgment was delivered on 6th November 2015. According to the applicant he was "supposedly" admitted in hospital from 8th June 2016 to October 2016 meaning that one year after the respondent has instituted a suit in June 2015. Again he was admitted from February 2017 to September 2017. He continued to be in bed rest up to October 2019 when the letter was signed by a doctor. First all Counsel for the applicant admitted

that they do not have an original letter despite the fact that the letter was written for the applicant meaning that he requested for the letter. Out-rightly, I discard the letter as the applicant ought to have provided original letter to prove his assertion. Secondly his averments in the affidavit and even by his counsel are too vague and neither the dates nor periods within which the incidents occurred were availed to the court leave alone failure to account for each day of delay. All in all I find no sufficient reason has been explained to make the applicant not able to file the required application in time and make this court exercise its judicial discretion to extend time. Consequently I dismiss the application with costs.

Accordingly ordered



R.A. Ebrahim

JUDGE

Dar Es Salaam

19.06.2020.