

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

AT DAR ES SALAAM

MISC. APPLICATION NO. 738 OF 2016

(Originating from PC Civil Appeal No. 3 of 2016 High Court of Tanzania at Dar es Salaam, Hon. Judge Mwandambo (as he then was))

HAFIDHI SELEMANI.....1ST APPLICANT

SHANI SELEMANI.....2ND APPLICANT

VERSUS

**SALIMA SELEMANI (*Administratrix of the
estate of the late SELEMANI JUMA.....RESPONDENT*)**

RULING

Date of last Order: 22/04/2020

Date of Ruling: 10/07/2020

MLYAMBINA, J.

The application at hand has been made under *Section 14 of the Law of Limitation Act, Cap 89 R.E. 2002*. The applicant has sought for the following orders:

- i. That, the Honorable Court be pleased to grant leave to the applicant to apply for setting aside dismissal order out of time.
- ii. Costs of this application be provided for.
- iii. Any other relief(s) this Hon. Court may deem fit and just to grant.

The application was supported with a joint affidavit of the applicants Hafidhi Selemani and Shani Selemani.

It is not in dispute that the applicants Civil Appeal No. 3 of 2016 was dismissed for want of prosecution on 16th September, 2016. This application was filed on 28th October, 2016.

The applicants in their joint affidavit have advanced mainly four reasons for this court to grant their application. *One*, the applicants contend that when the appeal was scheduled for mention they did not appear but they sent a letter. The court ordered the appeal be argued by way of written submission. The applicants were not aware of that order. They came to discover after receiving eviction order dated 20th October, 2016. *Two*, the applicants kept making follow up to the clerk of the judge one Kaminda but she gave feedback that the file was still with the judge. *Three*, on 14th September, 2016 when the applicants came to file his letter dated 14th September, 2016 the Court clerk informed them that the case has been dismissed.

In the written submission in chief by the first applicant, there is another one points being raised. That, the applicants have not been given the right to be heard. Thus, the applicant is an old layman who knows nothing about the laws and procedures of the court. On that point, the applicant cited Meggary, J in the case of *John v.*

Rees and others (1969) 2 ALL ER 274, Vortescue, J used to say "the law of god and man both gives the party an opportunity to make his defence, if he has any, I remember to have heard it observed by very learned man upon such an occasion that even God himself did not pass sentence upon Adam before he was called upon to make his defence. The decision which was quoted with approval by Samatta, J (as he then was) in the case of *Rajabu Dibagula v. The Republic*, Criminal Appeal No. 53 of 2001 at Dar es Salaam.

In reply, the respondent objected the application for lack of sufficient cause and for non-accounting of each day of delay of about of 42 days. The respondent cited among other cases, court of appeal decision at Arusha Civil Application No. 2 of 2010 Between *Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania* (unreported), at page 6-7 in which the court had this to say:

It is in the discretion of the court to grant extension of time, but that discretion is judicial, and so it must be exercise according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may 'be formulated;

- a) The applicant must account for all the 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,*
- d) If the court feels that there are another sufficient reasons....*

I have considered both parties contention. It is not a deniable fact that leave to apply for setting aside as it applies in application for extension of time, requires sufficient cause to be adduced by the applicant with a proof thereof.

In the case of *Allison Xerox Silla v. Tanzania Harbours Authority* Civil Reference No. 14 of 1998 Court of Appeal of Tanzania at Dar es Salaam (unreported) as quoted by my brethren honorable Arufani Judge in *AG v. Masumin and Another Misc. Civil Application No. 11/2015 High Court Dar es Salaam* (unreported at page 9 where it was stated inter alia that:

...where an extension of time is sought consequent to a delay the cardinal question is whether sufficient reason is shown for the delay; other considerations such as the merit of the intended appeal would come in after the applicant has satisfied the court that the delay was for sufficient cause.

In the case of the *International Airline of the United Arab Emirates v. Nassoro*; Civil Application No. 263 of 2016, CAT at Dar es Salaam (unreported) at page 7 it was found that the consideration in granting application for extension is to assess whether the extension of time has been brought promptly as well as whether there was diligence on the part of the applicant. In the case of *Tanzania Coffee Board v. Rombo Millers Ltd, Civil Application No. 13 of 2015 (Unreported)* the Court of Appeal of Tanzania held that;

extension of time should be considered on two grounds; that every day must be accounted for which the applicant did; and the reason for the delay must be sufficient ...

The principle that an applicant must account for each day of delay has been held so in various cases including the case of *Kombe Charles Richard Kombe v. Kinondoni Municipal Council*, Civil Application No. 379/01 of 2018, Court of Appeal of Tanzania, (unreported), *Tanzania fish Processors Limited v. Eusto K. Ntagalinda, Civil Application No. 41/08 of 2018*, Court of Appeal of Tanzania, Mwanza (unreported).

The first applicant in this case has merely alleged that they were not aware of the procedures and laws for reasons of being old laymaI do understand that the term sufficient cause has not been

defined, what constitute sufficient reason will naturally depend on the circumstances of each case as held in the case of *Shanti v. Hindocha and Others* [1973] EA 207. However, ignorance of the law and procedures does not constitute good grounds to grant leave.

The applicants have also contended that the court clerk Kaminda informed them on 14th September, 2016 that the appeal has been dismissed. There is no any affidavit from the said clerk on that allegation. Even if there could be such affidavit, the applicants have not accounted for each day of delay from 14th day of September, 2016 when they became aware about the dismissal till on 28th October, 2016 when the applicant filed this application.

In the circumstances of the above, the application stands dismissed with costs for lack of merits.



Y. J. MLYAMBINA
JUDGE
10/7/2020

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Ruling delivered and dated 10th July, 2020 in the presence of the first applicant and in the absence of the applicant and the respondent. Right of Appeal explained.



Y. J. MLYAMBINA
JUDGE
10/7/2020

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