

**IN THE HIGH COURT OF TANZANIA  
MWANZA DISTRICT REGISTRY  
AT MWANZA**

**MISC. LAND APPLICATION No. 205 OF 2018**

*(Arising from the decision of Hon. De Mello, J in Misc. Land Application No. 169 of 2013  
HC Mwanza District Registry)*

**KAROLI SOKIA OBINGA .....APPLICANT**

**VERSUS**

**ADIKA ALILA.....RESPONDENT**

**RULING**

*31<sup>st</sup> March, 09<sup>th</sup> July, 2020*

**TIGANGA, J.**

The applicant in this application was also the applicant in Misc. Land Case Application No. 169 of 2013 which was dismissed on 12/07/2016 for want of prosecution following the persistent absence of the applicant. Following that order, on 23/10/2018 the applicant filed an application for extension of time to file an application for setting aside the dismissal order in Misc. Land Application No. 169/2013 date 12/07/2016 and restore Misc. Land Application No. 169/2013.

He also asked for cost to be in the main cause and any other order as this honourable court may deem fit to grant. The application has been preferred by a chamber summons filed under section 14 (1) of the Law of Limitation Act 1971, [Cap 89 RE.2019], Order IX Rule 4 and section 95 of

the Civil Procedure Code Act [Cap 33 RE 2019] and any other enabling provision of the law.

The same has been supported by the affidavit of the applicant. In that supporting affidavit, the applicant narrates the history of the case and informs the court that his non appearance was neither deliberate nor intentional, but it was caused by unforeseeable reasons. That the dismissal order which was entered in his absence after the case was called on different dates from the one known to him because the case was called for hearing on different date and when he appeared in court on the date he was informed that the case was scheduled, he was surprised to be told that the application had already dismissed.

It is his averment also that he failed to file an application for setting aside the dismissal order because he could not get a copy of the order on time despite the effort he did in making follow up.

That on 14/09/2016, he filed Misc. Land Application No. 216/2016 asking for the order of extension of time but unfortunately on 27/09/2018 the application was struck out for being defective with the leave to re file.

In the end he asks the order extending time so that he can file an application to set aside the dismissal order dated 12/07/2016, which dismissed Misc. Land Application No. 169/2013.

The application was opposed by the respondent, in the counter affidavit filed on 14/02/2019, in that; the applicant did not apply for setting aside dismissal order on time due to his negligence.

The hearing of the application was conducted orally in which the applicant reiterated the contents of the affidavit which, are contained in the summary of evidence above which, for the purpose of clarity, I will not restate at this stage. The respondent just like the applicant, he as well reiterated the contents of the counter affidavit and in the end put the applicant to strict proof of allegation.

That being the summary of the affidavit, counter affidavit and the submission by the parties, for and against the application, it is important to point out that the law upon which this application has been preferred, that is, section 14 (1) of the Law of Limitation Act (Cap 89 RE 2019], empowers this court, upon any reasonable or sufficient cause, to extend the period of limitation for institution on of an appeal or application other than an application for execution of a decree. For easy reference, the said provision is hereunder reproduced;

*"Notwithstanding the provisions of this Act, the court may, **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or application, other than application for execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

From this provision, the prescribed limitation period for this type of application has been stipulated under part III, item 4 of the schedule to the Law of Limitation Act (supra) which provides that, the time limit for an application to set aside the dismissal order under the Civil Procedure Code or the Magistrates Courts Act is thirty days. It means therefore that, the applicant was required to file his application within thirty days from the date of the impugned order. Failure to apply to set aside in time, attract this kind of application intending the time within which to file application to set aside to be extended.

In the case of **Omary Makunja Vs The Republic**, Criminal Application No. 88/2018 CAT DSM (unreported) in which the Court of Appeal quoted with approval the authority in the case of **Hassan Bushiri Vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Lyamunya Construction Company Limited Vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02/2010 and **Bakari Israel Vs Republic**, Criminal Application No. 04/2011 (all unreported), it was held in these case authorities that; in the application for extension of time, the applicant must show sufficient or reasonable cause for delay and that a delay of even a single day must be accounted.

Now, the issue is whether in this application, there is reasonable and sufficient cause for delay to file an application for setting aside the

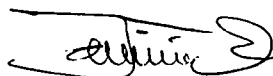
dismissal order. From the affidavit and the submission made by the applicant, he submitted that, from the date when Land Application No. 169/2013 was dismissed, he took steps, however, the application he filed after securing a copy of the order which dismissed Land Application No. 169/2013, was struck out on technical ground but with the leave to re file, a result of which, this application was filed.

That being the case, I find that, there is sufficient ground for this court to allow the application on the ground that the applicant acted promptly, and that for those days he delayed, there was sufficient reason for delay as the applicant could not have applied without attaching the order intended to be set aside.

That said, the time is hereby extended for the applicant to file an application for setting aside the impugned order dated 12/07/2016 which dismissed Misc. Land Case Application No. 169/2013. The applicant is given 21 days to file that application. Costs to be in the main cause.

It is so ordered.

**DATED at MWANZA this 09<sup>th</sup> day of July 2020**



**J. C. TIGANGA**  
**JUDGE**  
**09/07/2020**