

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**[LAND DIVISION]  
AT ARUSHA**

**MISC. LAND APPLICATION NO. 2 OF 2020**

*(C/f the Resident Magistrates' Court for Arusha with Extended Jurisdiction in Land Appeal No. 11 of 2019, Originating from High Court of Tanzania, Land Appeal No. 14 of 2019)*

**EMMANUEL LOHAY NUGHUS ..... 1<sup>ST</sup> APPLICANT**

**PAULO LOHAY NUGHUS ..... 2<sup>ND</sup> APPLICANT**

***Versus***

**MARCO SAQWARE GENDA ..... RESPONDENT**

**RULING**

*16<sup>th</sup> September & 16<sup>th</sup> October, 2020*

**Masara, J**

The Applicants herein, **Emmanuel Lohay Nughus** and **Paulo Lohay Nughus**, have brought this application under section 14(1) of the Law of Limitation Act, Cap. 89 [R.E 2002] praying for extension of time within which to file an application to set aside the dismissal order dated 14<sup>th</sup> August, 2018, (Mkama RM with Extended Jurisdiction). The Application is supported by a joint affidavit sworn by the Applicants, Emmanuel Lohay Nughus and Paulo Lohay Nughus. The Respondent contested the Application by filing a counter affidavit. At the hearing of the application, the Applicants were represented by Ms. Veneranda Joseph and Naserian Ally, learned Advocates, whilst the Respondent appeared in person, unrepresented. The application was argued *viva voce*.

The factual background leading to this Application can be deciphered from the affidavit of the Applicants. They contend that after filing their appeal on 10<sup>th</sup> April 2019, the same was admitted as Appeal No. 14 of 2019. However, the appeal was not assigned to a judge. That they kept on following the assignment and the date the appeal was to be heard but in vain. That on 15<sup>th</sup> October 2019, they wrote a letter of complaint to the Deputy Registrar. That after that letter, they got to know that their appeal had been transferred to the RM with extended jurisdiction and assigned Land Appeal No. 11 of 2019 and that the said appeal was dismissed by Mkama, RM (Ext. Jurisdiction) on 14/08/2019. By that time, it was too late to apply to set aside, hence the current application which was filed in January 2020.

In Court, Ms Veneranda did not have much to add to the joint affidavit. She fully adopted the contents of the joint affidavit in support of this application, praying the same to form part of her submissions. The learned advocate contended that she filed this application so that the Applicants are allowed to file an application for setting aside the dismissal order.

Contesting the application, the Respondent insisted that the application should be dismissed as the Applicants defaulted appearance for no good cause. He likewise prayed to adopt the contents of his counter affidavit. He argued that in the event the application is allowed, he will be prejudiced as he attended the court four times.

I have given due consideration to the joint affidavit and counter affidavit of the parties as well as their submission regarding this application. The main

issue for determination is whether the Applicants have adduced sufficient reasons to warrant the extension of time sought.

The Applicants in this application contend in their joint affidavit that they were not aware that their appeal was assigned to a judge. They, however, do not state exactly when they became aware that their appeal was placed before a Resident Magistrate with Extended jurisdiction. Similarly, the Applicants did not state why they were late in filing their application to set aside the dismissal order. All what is stated in their joint affidavit is the reasons for non-appearance in court.

In applications for extension of time, the Applicant has to show sufficient reasons for the delay. In ***Tumsifu Kimaro (The Administrator of the Estate of the Late Eliamini Kimaro) Vs. Mohamed Mshindo***, Civil Application No. 28/17 of 2017 (unreported) the Court of Appeal held inter alia:

*"Before dealing with the substance of this application in light of the rival submissions, I find it apposite to restate that although the Court's power for extending time under rule 10 of the Rules is both broad and discretionary, it can only be exercised **if good cause is shown**. Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion under rule 10, the Court must consider factors such as the **length of the delay, the reasons for the delay, the degree of prejudice the Respondent stands to suffer if time is extended, whether the Applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged**"*(emphasis supplied)

See also ***The Principal Secretary, Ministry of Defence and National Service Vs. Devram P. Valambhla*** [1992] TLR 387 and ***Lyamuya***

***Construction Company Limited Vs. Board of Registered Trustees of Young Women Christian Association of Tanzania***, Civil Application No.2 of 2010. In the latter case, the Court reiterated the following guidelines for the grant of extension of time:

- "(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 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."*

The record shows that the order sought to be set aside was delivered on 14<sup>th</sup> August, 2019. This application was filed on 9<sup>th</sup> January, 2020. Application to set aside dismissal order has to be filed within thirty days. The application was filed after almost four months. Paragraph 9 of the joint affidavit the Applicants contend that on the day the ruling was supplied to the Applicants, the time prescribed to file application to set aside the dismissal order had already lapsed.

The Applicants did not state when they were served with the dismissal order. However, the drawn order attached to this application shows that it was issued on 13<sup>th</sup> November, 2019. Yet, the time to file this application in that regard lapsed on 13<sup>th</sup> December, 2019. The time between 14<sup>th</sup> December and 9<sup>th</sup> January 2020 is not accounted for. The Court in its various decisions has insisted on the need to account for each day of delay. In **Bushiri Hassan Versus Latifa Mashayo**, Civil Application No. 3 of 2007 (Unreported) the Court elaborated that:

*"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps are to be taken."*

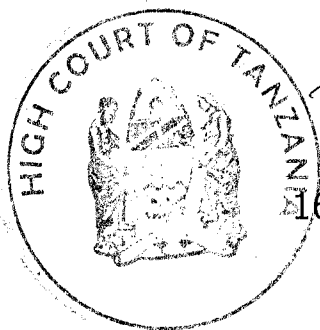
In ***Bharya Engineering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor***, Civil Application No. 342/01 of 2017 (unreported), the Court of Appeal reiterated:

*"This period of about fifteen days has not been accounted for. There is not an iota of explanation in the notice of motion, in the affidavit supporting it, in the written submissions filed in support of the application; not even in the oral arguments before me. As rightly submitted by the learned counsel for the Respondent, in applications of this nature, each and every day of delay must be accounted for."*

As alluded above, I have thoroughly scrutinised the Applicants' affidavit as well as the oral arguments made before this Court. There is no iota of explanation on the reasons for the delay to file the application as the law requires them to do. Failure to account for each day of delay necessitates this Court to exercise its discretion to refuse the grant of extension of time sought. As the Applicants have failed to show good cause for the delay, the application cannot succeed.

Consequently, this application fails for failure of the Applicants to show good cause for the delay. The application is dismissed with costs.

Order accordingly.



*[Signature]*  
Y. B. Masara

**JUDGE**

16<sup>th</sup> October, 2020