

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI.

MISC. LAND CASE APPLICATION NO. 9 OF 2020

LINDA L. SHOO.....APPLICANT

VERSUS

CHRISTOPHER A. MUSHI.....RESPONDENT

RULING

15/10/2020,16/12/2020

MWENEMPAZI, J.

The applicant LINDA L. SHOO filed an application before this court made under the provision of section 38 (1) of the Land Disputes Court's Act, 2002 applying for an order for extension of time within which to file an

application for setting aside the dismissal order for want of prosecution in Misc. Land Case Application No. 14 of 2019 dated 3rd day of December, 2019. This application is supported by the affidavit of LINDA L. SHOO, the applicant.

Before this court, both parties appeared in person and unrepresented. On 31st day of August, 2020 when the matter was scheduled for hearing, this court ordered the hearing be conducted by way of written submission and both sides complied with the scheduling order.

Arguing the application, the applicant stated there is no hard and fast rules in granting an extension of time. In order for the court to exercise its discretionary powers for extension of time, the applicant must demonstrate sufficient cause and cited a number of cases including the case of **Royal Insurance Tanzania Limited vs. Kiwenga Strand Hotel Limited**, Civil Application No. 111 of 2009, CAT. He said that, in determining the existence of sufficient cause, the following circumstances has to be considered;

- i. Reasons for the delay,
- ii. Whether the application was filed without delay

iii. *Illegality of the decision ought to be challenged.*

The applicant further submitted that, the applicant filed Misc. Land Application No. 14/2019 for extension of time to appeal out of time and the same was ordered to be argued by way of written submission. It was further stated that, he filed her submission on time, but there was misconception as he filed submission in support of the merits of appeal instead of the submission in support of the application for extension of time. Consequently, the Judge found that, failure to file proper submission amounted to no appearance and dismissed the application for want of prosecution. He said, the misconception was contributed by family problems that he was going through. Thus, contended that the delay was beyond the applicant's control.

The applicant further contended that, he filed this application promptly after the previous application being dismissed for want of prosecution on 3rd December, 2019 where he filed the present application early January, 2020. She referred this case to the case of **Benedict Mumello vs. Bank of Tanzania, Civil Appeal No. 12/2002** that was cited in approval in the case of **Tanga Cement Company Ltd vs. Jumanne D. Masangwa**

and Amos A. Mwalandwa, Civil Application No. 6/2001, CAT (unreported).

Alternatively, he presented the issue of illegality by contending that, the ruling that is intended to be challenged comprises illegalities that need to be challenged through an application for setting aside the dismissal order. He said, the application for extension of time in order to file appeal out of time was dismissed for want of prosecution because the applicant filed wrong submissions i.e filed submission in support of the appeal instead of submission in support of an application for extension of time whereas, the trial Judge was not supposed to hold that there was non-appearance, instead ought to disregard the contents of the submission. The case of **Mashado Game Fishing Lodge Ltd and 2 Others vs. Board of Trustees of Tanganyika National Park** (2002) TLR 319 was cited to support her argument. The applicant filed a number of cases including the case of **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and Tri – Telecommunication (Tanzania) Ltd vs. Citibank Tanzania Ltd**, Civil Reference No. 6, 7, 8 of 2006 to support the argument that the ground of illegality is a sufficient reason for grant of extension of time.

In reply, the respondent challenged the applicant's application by contending that the applicant failed to substantiate his application as he failed to give sufficient reason for the delay. He further contended that, the applicant has failed to account for the delay as this application was filed before this court on 15th day of January, 2020 while pre-requisite copies supporting the application were obtained a week before; hence failed to account for each day of delay. Therefore, the respondent prayed this application be dismissed with costs.

I have gone through and considered the submission of both sides. It is a trite law that, this court has discretionary powers to grant an application for extension of time; but that discretion is judicial which has to be exercised according to the rules of reason and justice and not according to private opinion, whimsical inclinations or arbitrarily as stated in the case of **Eliakim Swai and Another vs. Thobias Karawa Shoo**, Civil Application No. 2/2016, CAT at Arusha (unreported). In the case of **Lyamuya Construction Company Ltd vs. The Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2/10, CAT at Arusha (*supra*) the Court of

Appeal laid down four principles that guides the court in exercising the discretion to extend time, the said factors are;

- 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 and*
- d) *If the court feels that there are other sufficient reasons such as existence of point law of sufficient importance, such as the illegality of the decision sought to be challenged."*

Thus, in this application, the main issue for determination is whether the applicant has demonstrated sufficient cause for the delay. In this application, the applicant seeks for an extension of time in order to file an application to set aside the ruling in Misc. Land Case Application No. 14/2019 that dismissed the applicant's application for extension of time in order to appeal against the decision of the District Land and Housing Tribunal in Appeal No. 91/2017 out of time. The said decision was dismissed for want of prosecution as the applicant wrongly filed submission

in support of the appeal on merits instead of the application. In that basis, the applicant in this application was supposed to give reasons for the delay to file the present application but instead, the applicant in his affidavit in support of this application has adduced reasons that led to the dismissal of Misc. Land Case Application No. 14/2019. I beg to quote the said affidavit for ease of understanding;

"I LINDA L. SHOO an adult, Christian and resident of Moshi, Kilimanjaro DOHEREBY SWEAR and state as follows;

- 1. That I am the Applicant in this matter, hence conversant with the facts I am about to depose hereunder.*
- 2. That the said ruling was delivered on 3^d December, 2020 and the application was dismissed for want of prosecution.*
- 3. That I swear and state that the said decision was delivered on 3^d December, 2020 and I was confused due to family problem and I misdirected myself instead of filing written submission in supporting application of extension of time to appeal out of time, I filled written submission in supporting Petition of Appeal which was not scheduled Court Order.*
- 4. Accordingly, I swear and state that the Application has merits."*

As indicated above, the applicant has never stated even a single reason for the delay to file the present application within time from the time when the Misc. Land Case Application No. 14/ 2019 was dismissed for want of prosecution i. e from 3rd day of December, 2019 to the date when this application was filed before this court. Instead, as already noted above, the applicant in his affidavit and the submission in support of the application has adduced the reasons that led to the dismissal of Misc. Land Case Application No. 14/2019 not the reasons for delay to file the present application.

Based on that reason, this court finds that the applicant has failed to adduce sufficient reasons for the delay to file the present application and therefore I hereby dismiss this application with costs.

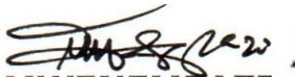
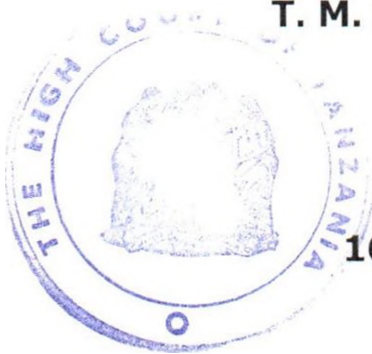
Order accordingly.


T. M. MWENEMPAZI

JUDGE

16/12/2020

Ruling delivered in Court in the presence of the applicant and absence of the Respondent


T. M. MWENEMPAZI
JUDGE

16/12/2020

