

IN THE HIGH COURT OF TANZANIA
AT SUMBAWANGA
MISC. LAND APPLICATION NO. 22 OF 2019

PATRICK KAYOMVYO APPLICANT

VERSUS

CHRISANT KIBANDIKO RESPONDENT

RULING

W.R. MASHAURI

16/3/2020 & 01/04/2020

This is an application to set aside the dismissal order entered by this court on 25/06/2019 in Misc. Land Appeal No. 18/2017 which was filed by the applicant Patrick Kayomvyo.

Having the applicant's appeal dismissed for want of prosecution by this court on 25/06/2019, the applicant did not file his application to set aside the dismissal order in time.

He has now filed this application under S. 14(1) of the law of Limitation Act Cap. 89 RE. 2002 praying this court to extend time to file an application to set aside the dismissal order entered by this court on 25/6/2019 in Misc. Land Appeal No. 18 of 2017.

In his affidavit to support his application, the applicant has deponed as well as contented in his submission during the hearing of this application that, when the matter was called in court on 13/09/2019 he entered appearance. The same was adjourned for hearing on 25/06/2019 which he

mistakenly heard to be 26/06/2019. That, when he went to court on 25/6/2019 and upon informed that his appeal was dismissed for want of prosecution on 25/6/2019 he developed heart problem which rendered the medical officer in-charge, Sumbawanga Referral Hospital to refer the applicant to other referral Hospital for further treatment whereby he was admitted on 26/06/2019 and discharged on 30/06/2019.

Having so submitted, he prayed the court to grant his application as the delay occurred was not that of his own making.

In his count Affidavit he deponed, the respondent contended as well as he does in his submission in opposing that the applicant's contention that he did not file the application to set aside the dismissal order because he was sick is questionable.

That, when his appeal was dismissed for want of prosecution on 25/03/2019 as he alleges, he did not file his application until four months lapsed and he filed it in court after he had filed an application for costs against the applicant. He therefore prayed the court to dismiss the applicant's application.

In rejoinder, the applicant rejoined that, being a prime mover of the case in motion was duty bound to attend in court to prosecute it. The respondent's allegation that he did not attend to court deliberately is not true. He again beg the court to allow his application.

This application as I have said above has been filed in this court under Section 14(1) of the law of Limitation Act Cap. 89 RE. 2002.

Section 14(1) of the Act provides thus:-

14(1) 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 an application, other than an application for the execution of a decree, 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.

In this application the issue to be asked is whether the cause of delay given by the applicant is reasonable and/or sufficient cause.

In his affidavit, the applicant alleges that on 13/5/2019 being present in court his appeal was adjourned and set for hearing on 25/6/2019, but he mistakenly heard on 26/6/2019.

That, when he went to court to attend his case on 26/6/2019 was told his appeal was dismissed for want of prosecution on 25/6/2019 and no sooner had he been told so than he developed a heart problem and according to the referral letter from Sumbawanga (annexture P-2) the applicant was referred for treatment to another Hospital. According to the purported referral letter issued by D. Isack Medical Officer in-charge Sumbawanga Referral Hospital dated 08/10/2019 with Ref. No. GHS/R.40/13 Vol. XIV/555, the applicant was referred **TO WHOM CONCERN** where upon being diagnosed was found with "general body malaise severe headache BP 220/120 mmhg **HYPERTENSION**". He was admitted on 26/6/2019

with Reg No. 36-18-39 and discharged on 30/06/2019. There is however none attached to his affidavit showing the referral Hospital where he was admitted on 26/6/2019 and discharged on 30/6/2019, nor is there any discharge indicating the Hospital he was admitted on 26/6/2019 and discharged on 30/6/2019 being signed by the Doctor who attended him all the time of his admission up to his discharge on 30/6/2019.

Further still it is indicated in the purported referral letter (supra) that, the same was issued on 08/10/2019 **TO WHOM CONERN** where the patient Patrick Abel Kayomvyo (54) (applicant) was admitted on 26/06/2019 and discharged on 30/6/2019. Here it means therefore that, the referral letter was issued **FOUR** months after the applicant's discharge from Hospital (if any) on 30/6/2019. This is odd.

Moreover, when the applicant addresses the court when the matter was called up for hearing on 19/03/2019 he submitted another story in respect of his admission to the Referral Hospital. He said was admitted on 25/03/2019 and discharged on 30/03/2019 and when he went to the court to make a follow-up on his case was told his case was dismissed for want of prosecution.

It is clear from the record that the applicant's appeal was dismissed for want of prosecution on 25/06/2019, and by virtual of the ERV No. 24873540, this application was filed in court on 22/10/2019. There is no good cause or sufficient reason given by the applicant why he did not file his application after he was discharged from the unknown referral Hospital where he was admitted on 26/06/2019 and discharged on 30/06/2019.

Leave alone his contradictory stories on the dates of his admission and discharge as shown above as well as the purported forged referral letter to unknown Hospital from Sumbwanga Referral Hospital, I am inclining to the contention by the respondent that what the applicant doing is nothing else but a deliberate intention to delay the respondent's right. A good lie can sometimes have all the grace of artistry, but only the truth can have the right of sincerity.

The applicant's application is dismissed with costs.



W.R. Mashauri

Judge

01/04/2020

Ruling delivered in court in the presence of all parties this 01 day of April, 2020.



W.R. Mashauri

Judge

01/04/2020