

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. LAND APPLICATION NO. 17 OF 2020

(Originating from Land Appeal No.52 of 2017 of the High Court of
Tanzania at Mwanza)

MARINGWA CHURUCHI APPLICANT

VERSUS

1. CHAUSIKU SERUKA MSETI

2. WAGAKA SERUKA MSETI

} **RESPONDENTS**

RULING

Last Order: 20.05.2020

Ruling date: 22.05.2020

A.Z MGEYEKWA, J

This is an omnibus application whereas the applicant has filed an application for extension of time to file an application for restoration the Land Appeal No.52 of 2017 which was dismissed for want of

prosecution. The application is brought under Order XXXIX Rule 19 of the Civil Procedure Code Act, Cap.33 [R.E 2019] and section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019] and the application is supported by an affidavit sworn by Edison Philipo, learned Advocate for the applicant and contested by a counter affidavit sworn by Chausiku Seruka Mseti and Wagaka Seruka Mseti.

The hearing was conducted via audio teleconference, Mr. Philipo, learned counsel represented the applicant whereas, Mr. Mligo, learned counsel represented the respondents.

Supporting the application, Mr. Edson submitted that the applicant's application is brought under Order XXXIX Rule 19 of the Civil Procedure Code Cap. 33 [R.E 2019] and section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. He prayed for this court to adopt his affidavit and form part of his submission.

Responding, Mr. Mligo prayed for this court to adopt the counter affidavit and form part of his submission. He submitted that the application is baseless because the applicant has not given good reasons why he was absent on 28th February, 2018 when the matter was called for hearing the Land Appeal No.52 of 2017. Mr. Mligo referred this court

to paragraph 4 of the applicant's affidavit that he instructed his clerk one Basco, but he has stated that the said letter was admitted in court and if so who received the letter. He further submitted that the grounds which are brought under Order XXXIX Rule 19 are unjustified since there is no any proof that shows that the learned Advocate was not present.

In relation to the 1st prayer, the applicant has not stated any reason for his delay in his affidavit. He went on to submit that the applicant was supposed to account for the days of delay from 28th February, 2018 when the Land Appeal was dismissed to the date when he lodged the instant application. He added that two years have lapsed and there is no any reason stated by the applicant. Mr. Mligo fortified his submission by referring this court to the case of Tanzania Fish Processor Ltd v Huston K. Mtagalinda Civil Application No. 41 of 2018 whereas the Court of Appeal held that in application for extension of time the applicant has to account for each day of delay. He insisted that there is no any sufficient cause given by the applicant. Thus, the applicant's application be disregarded.

It was Mr. Mligo's further argument that the applicant's affidavit was an omnibus application but he has filed only one affidavit which is

contrary to the law. To support his argumentation he cited the case of **Mohamed Abduli Hussein v Peter Kembaki Ltd** Civil Revision No. 66 of 2004 that a single affidavit cannot support an omnibus application thus the application lacks a supporting affidavit.

In conclusion, Mr. Mligo urged this court to strike out the application with costs.

In his brief rejoinder, the learned counsel for the respondent argued that he has prayed to file a supplementary affidavit but the learned counsel for the respondent refused. He went on to state that he wanted to file a supplementary affidavit in relation to the extension of time. He insisted that he was sick as stated in the affidavit. He urged this court to consider his submission.

In addressing the first prayer, the central issue for consideration and determination is *whether the applicant has disclosed a sufficient cause to warrant the court to grant his application for extension of time to file an appeal for readmission of land Appeal No.52 of 2017 which was dismissed by this court.*

There is no gainsaying that the power to extend time is at the court's discretion. It is settled law that a party who seeks an extension of time must disclose sufficient cause for the delay. The decisions are equally relevant for the requirement to account for each day of delay and failure to do so the Court cannot exercise its discretion in his favour. That position is reflected in several decisions of the Court of Appeal in applications for extension of time, and I have no doubt the principle applies to this court too. It is equally not in dispute, and indeed it is settled law that such discretion must be exercised judiciously on the basis of material placed before the court for its consideration.

The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May, 2019 and the case of **Karibu Textile Mills v Commissioner General (TRA)**, Civil Application No. 192/20 of 2016, **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

"Dismissal of an application is the consequence befalling an applicant seeking extension of time who fails to account for every day of delay."

After taking in consideration what has been stated in the affidavit filed by the applicant and the applicants' advocate submission I would like to make an observation that the applicant's Advocate in his submission prayed for this court to grant his prayer of extension of time to file an appeal out of time contrary but the affidavit does not contain any paragraph which relates to extension of time and the applicant. This means there are no any grounds of extension of time which is brought before this court by the applicant considering that this is an omnibus application, he was supposed to file a respective affidavit. The applicant's submission does not tally with what is stated in the Chamber Summons that he is applying for extension of time to restore the Land Appeal No.52 of 2017 which was dismissed by this court.

In the absence of credible evidence to prove the delay of filing the application for restoration, it will be asking too much from this court to accept the submission made by the applicant as sufficient material in support of the application. Taking into account that the reasons for the delay were not stated in the applicants' affidavit. The only logical

conclusion must be that the applicant acted negligently, the applicant is to blame for failing to account for each day of delay.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by extending the time since the applicant has not advanced any good cause to enable me to exercise the discretion to grant extension of time. After saying so this court cannot entertain the second prayer as long as the first prayer is disregarded. In the event, I hereby dismiss the application without costs.

Order accordingly.

Dated at Mwanza this 22nd day of May, 2020.


A.Z.MGEYEKWA

JUDGE

22.05.2020

Ruling delivered in 22nd day of May, 2020 via audio teleconference, Mr. Philipo, learned counsel for the applicant and Mr. Mligo learned counsel for the respondents were remotely present.


A.Z.MGEYEKWA

JUDGE

22.05.2020