

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 599 OF 2020

**BUSINESS DEVELOPMENT AND GENERAL
SERVICE COMPANY LIMITED APPLICANT**
Versus

**MUNICIPAL DIRECTOR, ILALA
MUNICIPAL COUNCIL.....RESPONDENT**

Date of last order: 15/04/2021

Date of Ruling: 07/05/2021

R U L I N G

MGONYA, J.

The Applicant **BUSINESS DEVELOPMENT AND GENERAL SERVICE COMPANY LIMITED** brought this Application under section 14(1) of the Law of Limitation Act. Cap. 89 [R. E. 2002] praying for the following Orders:

- (i) That this Honorable Court be pleased to extend time for the Applicant to file for restoration of Civil Case No. 26 of 2013;
and*
- (ii) Any other order this Honorable Court shall deem just to grant.*

The Application is supported by an affidavit sworn by **Mr. Israel Rwegalula** the Applicant's Principal Officer herein. The Application was ordered to be disposed of by way of written submissions. Parties adhered to the scheduled order, hence this ruling.

Submitting in support of the Application, and in the cause of demonstrating good cause for his delay, the Applicant averred that, after the Main Suit was dismissed for want of prosecution due to the Applicant's Principal Officer's family problems, it is when the time to file an application for restoration time lapsed. This was before and after the Applicant's case dismissal.

The Applicant averred that since he still have interest to pursue his case of which was dismissed for want of prosecution to this court, he therefore prayed that the Application be granted for the interest of justice.

Responding to the submission by the Applicant, it suffices to say that the Respondent vehemently objected the Application for the reason that the Applicant has failed to demonstrate the good cause for his delay. Further, the Respondent strongly submitted that the Applicant's submission does not support the Application; and finally that, the Applicant has not demonstrated sufficient cause for this court to exercise its discretion in granting the

prayer sought. In the event therefore, the Respondent prayed for the Application to be dismissed entirely with costs.

Apart from admitting that granting of the application is at the court's discretion, I have to outline the important principles for the application for extension of time that need to be adhered by the court in determining this kind of application.

The four principles are as below:

- 1. The Applicant must account for all the period of delay;***
- 2. The delay should not be inordinate;***
- 3. The Applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take; and***
- 4. If the Court feels that there are other sufficient reasons, such as existence of the point of law sufficient importance; such as the illegality of the decision sought to be challenged.***

Having carefully considered the rival submissions of both parties, and having considered the relevant law, I see it wise that before Court grants the Application for extension of time, the Applicant has to show sufficient cause to command the prayer sought.

It is a trite law that in order for this Court to grant the application for extension of time to file an application for leave out of time, one must established that there are sufficient reasons for the court to exercise its discretionary power to extend time. This is position of the law as reiterated in the case of **OSWARD MASATU MWIZARUBI VS TANZANIA FISH PROCESSING LTD, Civil Application No. 13 of 2010**, Court of Appeal of Tanzania where it was held that:

"What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."

Upon carefully perusal of the court's records, it came to my knowledge that, the reason for delay for the Applicant was family problems as well stated in Applicant's Affidavit and submission; taken into consideration that the Applicant's family problems are still at place todate. Under the circumstances, my consideration is obvious to grant the application.

Basing on the above, and taking into consideration that the application can be granted or rejected basing on the court's

discretionary powers though judiciously, I find that there is justifiable reasons advanced by the Applicant for this Court to exercise its discretionary power of extending time to the Applicant to file application for restoration of the Suit which was dismissed for the interest of justice.

In the event therefore, **the Application is accordingly granted.** The Applicant is to file his intended Appeal within **14 days** from the date of obtaining this Ruling.


Each party to bear own costs.

It is so ordered.


L. E. MGONYA
JUDGE
07/05/2021



Court: Ruling delivered in my chamber in the presence of Ms Judith Narson, Advocate for the Respondent, the Applicant in person and Ms. Msuya Bench Clark in my chamber today 07th May, 2021.


L. E. MGONYA
JUDGE
07/05/2021

