

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 200 OF 2021

(Originating from Misc. Civil Application No. 674 of 2020)

ROSE NGONYANI APPLICANT

VERSUS

CHILE NGONYANI..... RESPONDENT

RULING

26th May 2021 & 18th June, 2021.

E. E. KAKOLAKI J

In this ruling by way of chamber summons supported by the affidavit of **Wison K. Magoti** advocate for the Applicant, this Court has been moved to extend time to the applicant within which to set aside ex-parte order entered by this court on the 24/02/2021 in Misc. Civil Application No. 674 of 2021. The application which has been preferred under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E 2019] (LLA) is vehemently contested by the respondent who through his advocate Hamza Byarushengo filed a counter affidavit in that regard.

Briefly this application originates from the ex-parte order of this court in Misc. Civil Application No. 674 of 2021 dated 24/02/2021 against the

applicant whereby the respondent (applicant in the cited application) was allowed by this court to prove his application ex-parte following non-appearance of the applicant/respondent in court and her failure to file counter affidavit in contest of that application. When the matter came for ex-parte hearing on the 25/04/2021, the applicant's advocate who had been served with the chamber summons appeared in court and wanted to file the counter affidavit only to learn that there was an ex-parte order entered against the applicant in this matter on the 24/02/2021. As the sixty (60) days within which to file the application for setting aside ex-parte order as provided under item 21 Part III to the first schedule to LLA, had lapsed, the applicant opted to prefer this application for extension of time so as to be allowed to file an application for setting aside the said ex-parte order. Both parties are represented and were heard viva voce. Whereas the applicant was represented by Mr. Wilson Magoti learned advocate the respondent enjoyed the services of Mr. Hamza Byarushengo learned advocate.

In applications of this nature and under section 14(1) of LLA, this court has unfettered discretion to extend time upon good cause advanced by the applicant. The law does not state what amounts to good cause as every case is considered basing on its own facts and reasons advanced by the applicant accounting for the delay in filing the appeal or application. See the cases **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, (CAT-unreported) and **Republic Vs. Yona Kaponda and 9 Others** (1985) T.L.R 84. In assigning the reasons for the delayed days, the applicant among other things has a duty to

account for each and every day of delay. See the cases of **Alman Investment Ltd Vs. Printpack Tanzania and Others**; Civil Application No. 3 of 2003 (Unreported) and **Lyamuya Construction Company Ltd Versus Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported – CAT). In the case of **Alman Investment Ltd** (supra) the Court stated that:

"Applicant ought to explain the delay of every day that passed beyond the prescribed period of limitation."

The order in which extension of time within which to file an application to set it aside is being sought was entered by this court on 24/02/2021. The 60 days within which to file an application for setting it aside lapsed on the 25/05/2021 and this application was filed on the 27/04/2021, meaning two (2) days out of time. The applicant is therefore supposed to account for the delay of the said two days which Mr. Byarushengo for the respondent submits she failed to do.

Submitting against the application Mr. Byarushengo observed that, the applicant in her affidavit in support of the application did not account for the delayed days as required by the law. He noted that, Mr. Magoti concentrated on the reasons that prevented the applicant from filing the counter affidavit to defend the application in Misc. Civil Application No. 674 of 2021 instead of stating the reasons that prevented her from filing the application for setting aside ex-parte order in which extension is being sought for in this application. Having gone through the affidavit in support

of the application, I have noted and therefore agree with Mr. Byarushengo that Mr. Magoti concentrated with the reasons that prevented the applicant to defend the said application as deposed in paragraphs 5,6 and 7 of his affidavit. Therefore the two days delay was not accounted for a rightly argued by Mr. Byarushengo. Though not accounted for, I have considered the undisputed fact that Mr. Magoti advocate for the applicant appeared in court on 27/04/2021 when Misc. Civil Application No. 674 of 2021 was set to proceed with hearing ex parte and prayed the court to stay the hearing and allow him to file this application, the prayer which was not objected by Mr. Byarushengo. To show his seriousness on the matter this application was filed on the same date. One of the factor to be considered when extending time is the time delayed in filing the application or appeal, meaning that the same should not be inordinate. See the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported – CAT. In this matter having considered the fact that the timeline for filing the application to set aside the ex-parte order lapsed two days before the applicant filed this application, and the fact that, when played leave of the court to so do the prayer was not objected by the respondent and applying the principle of overriding objective that cherishes the spirit of disposal of the cases timely and on merits, I find there are sufficient reasons for this court to grant this application.

The application is therefore granted time is extended to the applicant for 14 days from today within which to file the application for setting aside ex-

parte order of this court dated 24/02/2021, in Misc. Civil Application No. 674 of 2020.

Costs to follow the event.

It is so ordered.

DATED at DAR ES SALAAM this 18th day of June, 2021.



E.E. KAKOLAKI

JUDGE

18/06/2021

Delivered at Dar es Salaam in chambers today on 18th day of June 2021 in the presence of Mr. Abdul Kunambi advocate holding brief for advocate Wilson Magoti for the applicant, Mr. Hamza Byarushengo advocate for the respondent and Ms. Asha Livanga, court clerk and in the absence of.

Right of appeal explained



E. E. KAKOLAKI

JUDGE

18/06/2021