

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. LAND APPLICATION NO. 59 OF 2020

*(Arising from the High Court decision in Land Case No. 08 of 2017 (Hon, V.L.Makani
J) dated 19th October, 2018)*

YOHANA JIGUNGU.APPLICANT

(Administrator of the estate of the Late SHADA KWEJI)

VERSUS

KULWA NGADANGIJO RESPONDENT

(Administrator of the estate of the late MbandwaNdili)

RULING

4th & 6th August 2021

MKWIZU, J:

This is an application by Yohana Jigungu a legal administrator of the estate of the Late SHADA KWEJI for extension of time to file an application for setting aside an exparte judgement entered against the Late SHADA KWEJI in High Court Land Case No. 8 of 2017 on 19/10/2018. It is made Under Section 14 (1) of the Law of Limitation Act No 10 of 1971 supported by applicant's own affidavitsworn on 8th June, 2020.

The grounds for seeking the extension of time are as narrated in paragraph 4 and 5 of the applicant's affidavit as follows:

4. That, the applicant who was not a party to the said application came to know of the exeparte judgement upon receipt by his relatives of the Deputy Registrars letter of 19th September, 2019 and a copy of the exparte judgement which are attached and marked as annex 'C' collectively

5. That after been served with the above documents (annex 'C') the applicant's eight relatives filed objection proceedings whose ruling was delivered to the parties on 20th day of May, 2020. A copy of the said ruling is attached and marked as Annex 'D'

This application was opposed to by the respondent's counsel, first in his counter affidavit but secondly in a notice of a preliminary objection filed on 15th June, 2021 faulting the competence of the application. The court heard both, the preliminary objection and the merit of the application together, with a directive note that, the decision on the merit of the application

would only depend on the outcome of the preliminary objection. This decision will therefore go by that order.

At the hearing of the application, both parties were represented by advocates. Mr. Jacob MayalaSomi learned advocate represented the applicant while Mr. Frank Samwel also learned advocate appeared for the respondent.

Arguing the preliminary objection, Mr. Frank Samweli submitted that the application is brought under a wrong proviso of the law. His contention was that, the applicant cited the provisions of the law of Limitations Act No 10 of 1971 without indicating that the act has been revised in the year 2019. He said, the application is therefore incompetent for citing a non-existent law.

On his party, Mr.Somi was of the view that, the omission is a mere technical error which cannot be left to override the substantive justice. He urged the court to ignore the pointed error and proceed to the merit of the matter.

I have given the parties submission on the preliminary objection a serious enquiry. Both counsels do agree that the applicant cited the proper provision required for extension of time requested for except that he failed to indicate that the law in question is a revised edition 2019. This, in my view, is a pure technical issue which can be resolved by invocation of the principles of overriding objections which requires courts to dispense justice without being bound by legal technicalities. After all, no any prejudice is occasioned by the pointed-out omission. That said, the preliminary objection is overruled.

I, now move to the merit of the application. As stated above, this is an application for extension of time where the following factors must be positively demonstrated;

- i. The applicant must account for all the period of delay*
- ii. The delay should not be inordinate*
- iii. The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- iv. If the court felt that there are other sufficient reasons,*

*Asuch as existence of point of law of sufficient importance,
such as the illegality of the decision sought to be
challenged.*

The above guideline was given in **Lyamuya Contraction Company Ltd vs Board of Registered Trustees of Young Woman's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported). I will be guided by the same principles.

Applicant reason for the delay is that he was not party of the proceedings in Land case No 8 of 2017. In his own affidavit, applicant said, case against the deceased ShadaKweji who died on 1/6/2017 was filed in court on 18/8/2017. Applicant became aware of the exparte judgement on 19/9/2019. According to Form IV attached to the affidavit applicant was issued with letters of administration of the deceased estate on 6/12/2019. From there, he spent considerable time to objecting into the execution proceedings which was pending before the deputy registrar who delivered the ruling on 20th May 2020. The records also show that the applicant filed this application on 6th October, 2020 almost five months after the ruling in the execution application.

I should state from the outset here that, applicant has failed to justify his delay. While it is true that he was not part of the high court's proceedings in Land case No 8 of 2017, the deposition in his affidavit confirms that he was aware of the expert judgement since 19/9/2019. Applicant's affidavit is silent on the steps taken after he learnt of the existence of the ex-parte judgement to 6/10/2020 when he filed this application.


I find myself not persuaded by the applicant's counsel's submissions that applicant delayed while pursuing the execution application firstly because, no explanations were made to indicate how important the execution proceedings were to the application for extension of time. And even assuming that the execution proceedings had something to do with setting aside ex-parte judgement or this application, still the time taken by the applicant after the ruling by the registrar in execution to the time of filing this application is too long for a diligent applicant. As deposed in the affidavit, registrar's ruling was delivered in 20/5/2020, applicant stayed idle for almost five months to 6/10/2020 just to file this application. Faced with a similar application, Court of Appeal in **Ludger Benard Nyoni V National Housing Corporation**, Civil Application No. 372/01 of 2018 (Unreported)

Cited with approval the decision in **Uitenhage Transitional Local Council V south African Revenue Service**, 2004 (1) SA 292 stating that;

"Condonation is not to be had merely for the asking; a full detailed and accurate account of causes of the delay and its effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility"

As rightly submitted by Mr. Frank Samwel, applicant failed to give a detailed account for the delay. The application is for that reason dismissed for lacking in merit. It is so ordered.

Dated at SHINYANGA, this 6th day of August, 2021


E.Y. Mkwizu
Judge
6/8/2021

