

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION NO. 92 OF 2021

(Arising from order of the court in Misc. Civil Application No. 111/2020 before Hon. J.C. Tiganga, J dated 24/02/2021)

KESSY KUPELWA.....APPLICANT

versus

KWILIGWA DEREFA.....RESPONDENT

RULING

9th & 30th September, 2021

RUMANYIKA, J.:

On 24/02/2021, it appears when, by way of audio teleconference the application for a certificate on point of law was before this court (Tiganga, J) called on for hearing, and, according to court Kessy Kupelwa (the applicant) having had defaulted three times, the application was dismissed for want of prosecution. The latter was not happy he undertook to have the matter restored but for the delay. Hence the application for extension of time and setting aside the dismissal order.

For avoidance of doubts the instant application was brought under S. 44(1) of the Law of Limitation Act and S. 95 of the Civil Procedure Code Chapters 89 and 33 RE 2019 respectively. It is supported by affidavit of Kessy Kupelwa whose contents the latter adopted during audio teleconference hearing on 9.9.2021. Like the applicant, Kwiligwa Derefa (the respondent) appeared in person. I heard them through mobile numbers 0755 913 791 and 0766 645 368 respectively.

The applicant submitted that for several times the parties having had been asked to remain back home until such time may be when Corona Virus Pandemic was reported gone, he complied, then fell sick only at a later stage to learn that his application had been dismissed for his nonappearance. That he wanted to have the order been set aside but for the time bar hence the instant application. That is all.

In reply the respondent submitted that the application ran short of merits. Mgeyekwa and Tiganga, JJ having had dismissed all the applicant's claims. That it was, but only applicant's delaying tactics. That is all.

The issue is whether the applicant has assigned a sufficient ground for extension of time in the first place. The answer is no for one main reason;

For the purposes of service and, one having had furnished the court with his mobile number 0755913791, like the respondent, until such time one could have been ordered to stay away home so much that due to Corona Virus Pandemic the matter proceeded on digital platforms yes, but the applicant he did not, be it in the supporting affidavit or in his oral submissions state when exactly he became aware of the dismissal order leave alone when, if at all he fell sick he felt ok therefore able to follow up his application also who informed him about all this (paragraphs 8, 9, 10, 11 and partly paragraph 12 of the supporting affidavit referred) much as I am also aware of the legal principle that once it was established and proved illness constituted a sufficient ground for extension of time.

Even assuming that the applicant was aware of the dismissal order immediately say early or mid-March, 2021 to clear the doubts yet without explanation it took him say three (3) good months to lodge the instant application. In other words contrary to unbroken chain of authorities the rule in the case of **Moto Matiko Mabanga v. Ophir Energy PLC & 2 Others**, (CAT) Civil Application No. 463/10 of 2017 in particular, the applicant did not account for each day of the delay. I would increasingly

hold that in order courts of law to avoid endless litigation, provisions of the laws of limitation shall be strictly interpreted.

The devoid of merits application is dismissed with costs. It is so ordered.

Right of appeal explained.

S.M. RUMANYIKA
JUDGE
23/09/2021

The ruling delivered under my hand and seal of the court in chambers this 30/09/2021 in the absence of the parties.

S.M. RUMANYIKA
JUDGE
30/09/2021

