

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

MISC. LAND APPLICATION NO. 96 OF 2020

(Originating from the High Court of Tanzania at Dodoma in Land Application No. 12 of 2020)

MWAMI PAULO JOSEPHAPPLICANT

VERSUS

SALEHE MOHAMED SALEHE..... 1ST RESPONDENT

MWAMBA MILLENIUM CO. LTD.....2ND RESPONDENT

20/12/2021 & 28/12/2021

RULING

MASAJU, J

The Applicant, Mwami Paulo Joseph, seeks the leave of the Court to file an application out of time for stay of execution of the decision of the Land case No. 22 of 2016 in the District Land and Housing tribunal for Manyoni in respect of Misc. Land case No. 13 and 14 both of 2018 before the same District Land and Housing Tribunal for Manyoni. The Application

is pitted against Salehe Mohamed Salehe and Mwamba Millenium Co. Ltd, the 1st and 2nd Respondents respectively.

The Applicant's Chamber Summons application is made under section 14 of the Law of Limitation Act, [Cap 89 RE 2019] and is being supported by the Affidavit of his learned advocate, Halfan Moshi. The Affidavit gives the background and reasons for the delay and the application altogether.

The 1st Respondent contests the Application and there is Counter Affidavit sworn by his learned counsel, Mr. Marcely Costantine Kanoni, to that effect. The Respondent takes issues with the Applicant's averments denying them and putting him to strict proof thereof and at the same time give the reasons for the contest of the Application particularly in paragraphs 5-7 of the Counter Affidavit.

When the Application was heard in the Court on the 7th day of December, 2021, the Applicant was advocated for by Mr. Lucas Komba his learned counsel, whilst Robert Owino, the learned counsel, appeared for the 1st Respondent. The parties *inter alia*, adopted their respective pleadings (Affidavit and Counter Affidavit) to form their submissions in support of, and against the Application in the Court as they argued the application alongside their said pleadings.

The Applicant prayed the Court to grant the Application but the 1st Respondent prayed the court to dismiss the Application with costs because, he was negligent in filing the application in time as per the timeline given by the Court.

The Court has been impressed by the reason given by Applicant in paragraph 6 of the affidavit as for delay in processing the application within the period that had been given by the Court. There is no doubt that the period spent in obtaining the copy of judgment/Ruling is excluded in the computation of the timeline for processing a particular remedy. The law is explicitly categorical to that effect in section 19 of the Law of Limitation Act, [Cap 89 RE 2019].

Equally important is section 93 of the Civil Procedure Code, [Cap 33 RE 2019] which provides that where any period is fixed or granted by the court for the doing of any act prescribed or allowed by the Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

It is the considered position of the Court that the Applicant was not negligent in processing his application in time.

That said, the Application is hereby granted accordingly. The intended Application, if any, shall be filed in the court within thirty (30) days of the Ruling. The parties shall bear their own costs.




GEORGE M. MASAJU

JUDGE

28/12/2021