

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
MISC. LAND APPLICATION NO. 40 OF 2021**

RICHARD KITUNDU
HAMISI SHIPU }**APPLICANTS**

VERSUS

BARTHOLOMEO BENJAMIN, As Administrator
of the Estate of the late Benjamin K. Mpopo }**RESPONDENT**
(Origination from dismissal order of the High Court of Tanzania, Dodoma)

Dated the 20th of April, 2021

In

Land Appeal No. 78 of 2020

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RULING

21st July & 12th August, 2022

MDEMU, J.:

This is an application for enlargement of time to have in place an application for restoration of appeal No. 78 of 2020. According to the affidavit in support of the application, this Court (Mansoor J.) dismissed the said appeal for nonappearance of the Applicants on 20th of April, 2021. They did not move this Court to restore the appeal in time hence, the instant application.

The Applicants represented by Mcharo, learned Advocate and the Respondent under the service of Onesmo David, Learned Advocate appeared before me on 21st of July, 2022 arguing the application. Mr. Mcharo at the inception of hearing, prayed a joint affidavit sworn by the Applicants on 31st of June, 2021 be adopted to incorporate part of his submissions. He thereafter submitted that, Land Appeal No. 78 of 2020 was set for mention on 8th of April, 2021 before the Deputy Registrar and on 20th of April, 2021 which was again for mention, the presiding Judge dismissed it for nonappearance.

According to the learned Advocate, on 31st of May, 2021, the Applicants followed up their appeal only to be informed to have been dismissed for nonappearance. Following fear of Covid19 pandemic, the Applicant's delayed to process the application for restoration for almost eleven (11) days. He thus prayed the application be allowed so that the Applicants state what made their nonappearance on the appointed date for hearing. He cited the case of **Mrs. Fakhria Shamji vs. the Registered Trustees of the Khoja Shia Ithnasheri (MZA) Jamaat, Civil Appeal No.143 of 2019** (unreported) insisting that, where illegality is at issue in the impugned decision, the same as a ground for time enlargement.

In reply, Mr. Onesmo David resisted the application by praying first to have the counter affidavit of the Respondent be adopted to form part of his submissions. In his view, there is no basis in the application and that, fears as to Covid19 pandemic is not backed up by any document. He added that, it may not be possible that both Applicants were attacked by Covid19.

On the issue of illegality, he was of the view that the case of **Mrs. Fakhria Shamji vs. the Registered Trustees of the Khoja Shia Ithnasheri (MZA) Jamaat** (unreported) cited by the Applicants' counsel is distinguishable because it was on failure to file written submissions and was at the initial stage, while in the instant application, the dismissed appeal was scheduled for hearing. He concluded that, the Applicants did not act promptly on learning dismissal of their appeal. The counsel therefore asked me to hold that, the application is without merit and be dismissed.

I have dully considered pleadings of the parties together with the entire record. This being an application for extension of time, it is settled law that the Applicant has to show sufficient cause for this court to exercise its discretionary power to extend time. Essentially, the Court will exercise its discretion to extend time where there are good and sufficient causes. In essence, there are no hard and fast rules as to what amount to sufficient

cause but is dependent upon the facts in each particular case. See the case of **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2017** and that of **Vodacom Foundation vs. Commissioner General, TRA, Civil Application No. 107/20 of 2017** (both unreported), just to mention a few.

In the instant application, there are two areas to consider. One is whether the Applicants had sufficient cause for the delay and two, illegality. Beginning with the former, the appeal was dismissed on 20th of April, 2021. Restoration was to be before 20th of May, 2021. The application herein was filed on 24th of June, 2021. The Applicant therefore had to account a delay of almost 4 days. This one, going to the affidavit and the submissions have not been accounted for. Fears as to covid19 pandemic, is associated with an application for setting aside dismissal order which isn't the issued here. This ground is thus dismissed as the Applicants have not accounted for on what they were doing in the four days.

Regarding illegality, let me first reproduce the proceedings as hereunder:

Date:28/8/2020

Coram: E.J. Nyembele-DR

1st Appellant: Absent

2nd Appellant: Absent

Respondent: Absent

RMA-Matilkila

Order: *Mention on 15/10/2020.*

Parties be notified and served.

Call original record.

Sgd:

E.J. Nyembele

Deputy Registrar

28/08/2020

Date: 15/10/2020

Coram-A.K.Rumisha, DR

1st Appellant: Absent

2nd Appellant: Absent

Respondent: Absent

RMA-Maximilian

Order: *Mention on 1/12/2020.*

Sgd:

A.K. Rumisha

Deputy Registrar

15/10/2020

Date:8/4/2021

Coram: E.J. Nyembele-DR

1st Appellant: Absent

2nd Appellant: Absent

Respondent: Absent

RMA-Matilkila

Order: Mention on 20/4/2021.

Sgd:
E.J. Nyembele
Deputy Registrar
8/4/2021

Date:20/4/2021

Coram: L. Mansoor,J.

1st Appellant: Absent

2nd Appellant: Absent

Respondent: Present

RMA-Matilkila

Respondent:

I come from Misigiri Singida. I incur a lot of costs coming here.

Order: *the appeal is dismissed for nonappearance of the appellants, with costs.*

Sgd.
L. MANSOOR
JUDGE
20/4/2021

In the above record, on 8th of April, 2021 when the matter was scheduled for mention on 20th of April, 2021, both the Appellants and the Respondent were absent. On the dismissal date, the Respondent was

present. How did he come to know the fixed date, this is not the forum. Again, it appears in the record before Rumisha, Deputy Registrar, the matter was fixed for mention on 1st of December, 2020. The record is silent as to what transpired only to find the matter before the Deputy registrar again on 8th of April, 2021. What transpired, again, this application will not resolve.

In my opinion, the above are illegalities suffices to enlarged this application. The Applicants therefore will be able to address the court where they were on 20th of April, 2021 when the Appeal got dismissed for nonappearance. The application is accordingly allowed. Time to file an application for setting aside the dismissal order is extended for thirty (30) days from the date of this ruling.



Order accordingly.

Gerson J. Mdemu
JUDGE
12/08/2022

DATED at DODOMA this 12th day of August, 2022



Gerson J. Mdemu
JUDGE
12/08/2022