

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA

MISC. CIVIL APPLICATION NO. 132 OF 2021

(Arising from the Ruling of Bill of Costs No. 15 of 2019 dated 26/5/2020 – Original Land Case No. 22 of 2017)

1. **EMMY EPHRON NGOWI**
2. **JOSEPHIN SAMSON KIWIA** }**APPLICANTS**

VERSUS

1. **BANK OF AFRICA (T) LTD & 2 OTHERS**
2. **MABUNDA AUCTION MART CO. LTD**
3. **MZALENDO AUCTION MART & CO. LTD** }**RESPONDENTS**

RULING

3rd February, 2022
J.R. KAHYOZA, J.

This is an application seeking for extension of time to a file reference matter against the decision of taking officer.

The background of this matter is that the applicants instituted Land Case No. 22/2017 which was dismissed with costs. The respondents instituted a bill of costs which was taxed at Tsh. 8,400,000/= . Aggrieved, the applicants instituted the reference No. 79/2020. The reference matter was struck out with costs on the reason that it was filed out of time. After the dismissal of Reference matter No. 79/2020, the applicants filed the current application.

The application is supported by the affidavit of Emmy Ephron Ngowi and Josephine Samson Kiwia. On the date the application came for hearing only Josephine Samson Kiwia, the second applicant appeared. She had

nothing submit orally to support her application. Thus, the application is determined on the bases of what is deponed on the affidavit.

It is trite law that a person applying for extension of time must exhibit reasons which caused his delay. See **Mumello v. Bank of Tanzania** [2006] E.A. 227, where the Court of Appeal stated that:

*"... an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been **sufficiently established that the delay was due to sufficient cause**"*

It is therefore, upon this Court to find out if the applicants did adduce reasons for delay. I went through the affidavit and found that there is only ground adduced, which is that they applicants delayed because they were prosecuting High Court Misc. Civ. Application No. 79/2020 that is reference matter.

It is undisputed that delays while an applicant is a prosecuting a matter before a court of law related to the matter under consideration is excusable. This delay is commonly referred to as technical delay. It is trite law that technical delays are excusable. This stance was enunciated by the Court of Appeal in **William Shija and another v. Fortunatus Masha** [1997] T.L.R. 213. The Court of Appeal stated the following -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the

present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

For that reason, time from the date Misc. Civ. Application No. 79/2020 was filed up to 17/08/2021 when it was struck out is not countable. It is on record that Misc. Civ. Application No. 79/2020 was struck out on account that it was filed out of time. The applicants did not account for the delay before they filed Misc. Civ. Application No. 79/2020. Not only that also Misc. Civ. Application No No. 79/2020 was struck out on 17/08/2021 and the current applications filed on 13/9/2021. Thus, the current application was filed hardly a month from the date of Misc. Application No. 79/2020 was struck out. The applicants did not account for such a delay.

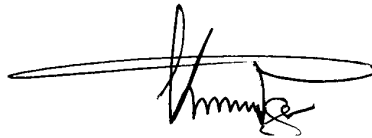
It is settle law that every time of delay must be accounted for, even if it is one day delay. The Court of Appeal in **Hassan Bushiri v. Latifa lukio Mashayo**, CAT Civil Application No. 3 of 2007 (unreported), imposed a duty on litigants who seek to extend time in taking actions to account for each and every day of delay. It stated that-

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

The applicants did not account for the delay before instituting Misc. Civ. Application No. 79/2020 and the period of almost a month from the date Misc. Civ. Application No. 79/2020 was struck to the date the current application was filed.

In the end, I find that the applicants failed to adduce sufficient reasons to account for the delay. Consequently, I dismiss the application for want of merit. I make no order as costs as the respondents did not appear or file a counter-affidavit.

It is ordered accordingly.

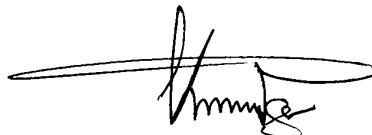


J.R. Kahyoza

JUDGE

03/02/2022

Court: Ruling delivered in the presence of Josephine Samson Kiwia, the second applicant and in the absence of other parties. B/c Ms. Martina present.



J.R. Kahyoza

JUDGE

03/02/2022