

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

**MISC. LAND APPLICATION NO. 76 OF 2021**

**MAHIJA SELEMAN PANDA .....APPLICANT**

**Versus**

**MOHAMED SAID SEIF ..... 1<sup>ST</sup> RESPONDENT  
SELEMANI PESA ..... 2<sup>ND</sup> RESPONDENT  
MWINYIMADI PESA ..... 3<sup>RD</sup> RESPONDENT  
AISHA PESA ..... 4<sup>TH</sup> RESPONDENT  
MWAJUMA PESA ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

*20<sup>th</sup> & 21<sup>st</sup> April 2022*

***Kahyoza, J.:***

On the 10<sup>th</sup> of June, 2014, this Court struck out Land Case No. 10 of 2009, which Mahija Seleman Panda (Mahija) had instituted. Mahija was not amused. She applied to this Court seeking for restoration order. The application was struck out on account of a defective affidavit. Undaunted, Mahija filed another application praying for extension of time to file an application for restoration of Land Case No. 10 of 2009. It was Misc. Application No. 104/2016, which was instituted on 18.08. 2016 and struck out on 10.4. 2018.

Determined to prosecuted Land Case No. 10 of 2009, Mahija instituted the instant application on 6.8.2021 praying for extension of

time to apply for restoration of Land Case No. 10 of 2009.

It is not disputed that the applicant instituted an application for extension of time to apply for restoration of Land Case No. 10 of 2009, seven (7) years from the date of order striking out the said land case. It is also beyond dispute that Mahija filed the current application three years after this Court struck out Misc Application No. 104/2016. The Court struck out Misc. Application No. 104/2016 in the presence of the applicant's advocate Mr. Kweka. It was not controverted that Mr. Kweka conceded to the preliminary objection.

Given the affidavit and counter affidavit, on one side, and the rival submissions, on the other, there is only one issue that is whether the applicant has adduced sufficient reason for delay.

**Has the applicant adduced sufficient reason for extension of time?**

An application for extension of time can only be granted upon the applicant adducing good ground or sufficient reason(s) for delay. See the established principle in **Mumello v. Bank of Tanzania** [2006] E.A. 227. It was stated in that case 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"***  
*(Emphasis is added).*

The applicant is seeking for extension of time to restore Land Case No. 10/2009 struck out on 10<sup>th</sup> of June, 2014. She instituted the application on 6<sup>th</sup> August, 2021, that is after seven years. This was unprecedented delay. The applicant is duty bound to account for each day of the delay. In **Hassan Bushiri v. Latifa Iukio Mashayo**, CAT Civil Application No. 3 of 2007 (unreported), where the Court imposed a duty on litigants who seek to extend time in taking actions to account for each 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 applicant affidavit depicts that seventeen (17) days after the Court struck out Land Case No. 20/2009, the applicant instituted Misc. Application No 105/2014. The application, which this Court struck out on 11. 5. 2016. There is no reason advanced as to why the applicant took seventeen days to apply for restoration. All in all, I take it that she applied within a reason time. Later, on 18.5.2016 the applicant instituted

another application. It was Misc. Application No. 104/2016. After the Court struck out Misc. Application No. 104/2016 on 10.04.2018, the applicant did not take any action until 6.8.2021 when she instituted the current application. The applicant is bound to account for every time of delay from 10.04.2018 to 6.8.2021.

The applicant's ground for delay is that she was sick and of old age. She averred that in all three applications she was being represented by Mussa Mwinduchi, a person she granted powers of attorney. The applicant's advocate submitted that the applicant was attending hospital for treatment. He submitted further that the applicant was admitted and that after she was discharged she was attending clinic. She was therefore, prevented by ill health to institute an application for restoration of Land Case No. 10/2009. To buttress his submission that sickness was a ground for extending time, he referred this court to the case of **Emmanuel R. Maira v. Executive Director of Bunda District Council**, Civ. Appl. No. 66/2010 CAT (unreported).

The first respondent's advocate Mr. Mutalemwa vehemently opposed the application for extension of time. After praying to adopt the counter affidavit, he argued that the applicant had not adduced sufficient

reason for delay. Like the applicant's advocate, Mr Mutalemwa advocate submitted that after the Court dismissed Land Case No. 10/2009, all subsequent applications were filed by Mussa Mwinduchi, a person whom the applicant granted powers of attorney. He contended that the applicant's contention that she could not institute the application because her sickness is baseless as she had prosecuted previous applications vide her agent. He added that the applicant was not diligent as she was moving around to attend hospital for treatment but she did not take steps to restore her case.

He also marveled why did the applicant's agent, that the applicant's donee of powers of attorney, not take action to institute the application after the earlier application was struck out. He submitted that the applicant did not give evidence to establish the date the powers of attorney donated to Mussa Mwinduchi expired.

The first respondent's advocate submitted that a case the applicant's advocate cited was not applicable to the current situation as the facts were different. He submitted that in **Emmanuel R. Mainga's** case, the applicant travelled for treatment to Dar es salaam, when he returned to Bunda he applied for extension of time. In the present case,

the applicant was attending the hospital in Mwanza for treatment and she required to take action within the High Court of Mwanza. For that reason, the facts in the present application are quite distinct from **Emmanuel R. Mainga's** case.

In his brief rejoinder, the applicant's advocate submitted that the first respondent's advocate misdirected himself to contend that applicant was moving around for treatment. He contended that the applicant was admitted and after she was discharged she attended her clinics.

I agree with the applicant's advocate that sickness is good ground for extending time for taking requisite steps provided by law. However, in order to ill health to amount to a sufficient reason for delay, the applicant must demonstrate how it prevented him to take the indispensable legal step within specified time. I had an opportunity to read the case the applicant's advocate cited of **Emmanuel R. Maira**. In that case, the Court of Appeal observed that-

*"Indeed, the medical chits tendered as exhibits display that the applicant was on treatment in Dar es salaam between July, 2002 and March, 2003. Thus, on 27/8/2002, when the ruling by Masanche, J. was delivered he was absent as he was already in Dar es salaam."*

It is clear that ill health made the applicant in **Emmanuel R.**

**Maira's** case unable to take action as he had travelled to Dar es salaam for treatment. In the present case applicant did not demonstrate how ill health prevented her from applying for restoration her case for three years. Unlike the applicant in **Emmanuel R. Maira** 's case who in Dar es salaam attending treatment and required to take action in Mwanza and he was not aware the decision of Masanche, J., Mahija was in Mwanza, required to take action in Mwanza and aware of the decision of Ebrahim, J. She had time to pursue her case. It is also not clear for how long was she admitted so unable to pursue her case.

Even if, it is true that the applicant's sickness prevented her from pursuing her case, still she could not apply **Emmanuel R. Maira** 's case. The applicant in **Emmanuel R. Maira**'s case had no agent, there was no person holding powers of attorney. In the instant case Mahija had donated powers of attorney to Mussa Mwanduchi who had previously instituted three applications and prosecuted them on her behalf. The applicant did not stated reasons that prevented her donee of powers of attorney to institute the application timely as he had previously done.

The applicant averred under paragraph 7 of the affidavit that-

*"That all these applications the applicant was being represented by one Mussa Mwinduchi on the strength of a power of attorney*

*due to old age and bad health conditions.”*

The applicant had an agent to institute and prosecute application(s) in relation to Land Case No. 10/2009, there is no justification to aver that sickness prevented her from taking action. `

In addition, the first respondent's advocate deponed that Misc. Application No. 104/2016 was struck out in the presence of the applicant's advocate Mr. Kweka, on 10.4.2018. The applicant did not controvert the averment that Misc. Application No. 104/2016 was dismissed in the presence of her advocate. Thus, the applicant was conscious that her application was struck out on 10.4. 2018. She decided not to take any action until after three years. One wonders why did the applicant not instruct her donee of powers of attorney or her advocate to pursue the matter after the order striking out the application on 10.4. 2018. There is no evidence to display that she failed to action in 2018 because of sickness and old age and took action in 2021 after she recovered from ill health and became younger or rejuvenated.

The applicant's advocate contended that the applicant was admitted and later discharged. He submitted that the applicant after her discharge, attended clinics. The submission of the applicant's advocate was not supported by averments in the applicant's affidavit. The



submission of an advocate from the bar is not evidence. It is settled that advocate's submission is not evidence. It cannot be relied upon to prove or disapprove anything stated in an affidavit. In **Registered Trustees of the Arch Dioceses of Dsm vs. The Chairman Bunju Village Government and Others**, Civil Case No. 147 of 2006 to buttress his submission. In that the case the Court of Appeal held that-

*"reasons for the delay must be reflected in the affidavit. Submissions are meant to reflect to the general features of the party's case. Submissions are not evidence but explanations on the evidence already tendered."*

I am not convinced that sickness prevented the applicant to take steps from 10.4.2018 when Misc. Application No. 104/2016 was struck out to 6.8.2021 when the applicant instituted the current application. She was not diligent to pursue her right. She either lost interest after Misc. Application No. 104/2016 was struck on 10.4.2018 or fell to a deep slumber. **The law serves the vigilant, not those who sleep. (*vigilantibus non dormientibus jura subvernunt*).**

In the upshot, I find that applicant accounted for period of delay from 2014 to April, 2018, her delay is what is referred as technical delay. She delayed while prosecuting applications. Nevertheless, I agree with


the first respondent's advocate that the applicant failed to adduce sufficient reason(s) to account for a three years' period of delay to apply for restoration of Land Case No. 10/2009. She did not account for delay from May, 2018 to August, 2021 as I have demonstrated above. Consequently, I dismissed the application for want of merit. I make no order for costs since the first respondent's advocate did not press for costs.

I order accordingly.

**J. R. Kahyoza**  
**JUDGE**  
**21/4/2022**

**Court:** Ruling to delivered in the presence of Mr. Steven advocate and Mr. Mutalemwa advocate for the applicant and the first respondent, respectively. The rest of the respondents absent. B/C Ms. Martina present.



  
**J. R. Kahyoza,**  
**JUDGE**  
**21/4/2022**