

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 317 OF 2021

(Arising from Civil Case No.192 of 2018 dated 5/05/2021)

RAMADHANI SHABANI..... APPLICANT

VERSUS

TANGANYIKA CHEAP STORES LIMITED.....1ST RESPONDENT

NATIONAL BANK OF COMMERCE LIMITED.....2ND RESPONDENT

MAKATA JELA JUMBE.....3RD RESPONDENT

RULING

18/11/2021 & 12/08/2022

LALTAIKA, J.

This is an application for extension of time for filing an application to set aside out of time the dismissal order of this court dated 5/5/2021 (His Lordship Rwinzile, J.) and any other order(s) or reliefs this court may think just to grant.

The application was preferred in the chamber summons filed under Section 14(1) of the Law of Limitation Act, [Cap 89 R.E. 2019]. The chamber summons is supported by an affidavit affirmed by Ramadhani Shabani who is the applicant herein. The application was countered by the 2nd and 3rd respondents by way of counter affidavits.

Shortly, the facts of the case as grasped from the affidavit and the record are as summarized below.

The applicant/plaintiff who in this application will be referred simply as the applicant had filed a Land case (No.192 of 2018) in this court and the same was assigned to His Lordship Rwinzile, J. The matter had been scheduled for 1st Pre Trial-Conference (PTC) on 5/5/2021 whereupon the applicant failed to enter appearance without showing any cause. Consequently, the court dismissed the suit under Order VIII(b) R.20(1)(a) of the Civil Procedure Code (supra). On 5th day of July ,2021 the applicant decided to file the application at hand.

The applicant appeared in person, unrepresented by counsel and was quick to pray that the matter be disposed of by way of written submissions. The 2nd respondent was represented by Ms. Josephine Safiel Advocate, the 3rd respondent by Charles G. Lugaila, Advocate while the 1st Respondent did not appear before the court. The learned counsels had

no objection to the prayer by the applicant to proceed to hearing by way of written submission thus this court granted the prayer.

Arguing in support of the application, the applicant first and foremost prayed for the court to adopt his affidavit to form a part and parcel of his submission. He then went on and submitted that courts of law when grant an application of this kind are bound to accord consideration to, among other things, the length of delay, conduct of parties, degree of prejudice if any that each party suffers depending on how the court exercises its discretion, need to balance interest of a party who has constitutionally underpinned right of appeal and whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged.

It is the applicant's submission that the cause for his delay to make this application appear at paragraphs 6,7,8,9 and 10 of his affidavit. He drew this court's attention to his supporting documents namely: the letter requesting for a copy of the court ruling and a copy of the ruling.

The applicant went on to submit that upon receipt of the copy of the ruling on 24/5/2021 he was already late for 5 days. He stated further that he was faced by yet another challenge namely refusal of instruction

by his previous Advocate claiming that he was displeased with the way the matter was delt to the extent of discrediting his professionalism.

As a result, the applicant asserted, he went for advocate shopping as stated in paragraph 13. He finally got hold of a legal assistance provider who offered to prepare the application for him and the same was filed on 16th June,2021.

With regards to the length of delay, the applicant submitted that this application was filed on 16th June 2021 while the copy of the Ruling was obtained on 24/5/2021 a difference of about 21 days. The reason for such a lengthy delay, the applicant averred, was caused by refusal of instruction by his previous advocate Mr. Rochus Asenga.

The applicant submitted further that he had been dutifully diligent and eager to pursue the dismissed suit to its finality. He insisted that his unwavering interest in the suit arises from the purported sale of his property without involving him which caused much prejudice. He emphasized that as a result of such sale, he and his family no longer have any fixed abode.

On the degree of prejudice if any that each party suffers depending on how the court exercises its discretion, the applicant submitted that the

other parties had inflicted pain to him while they bear no suffering compared to him who had been thrown out in the cold.

It is the applicant's submission that he stands more prejudice than the respondents and that is why he earnestly prays this court to grant the extension of time sought so that the wrong could be righted.

Submitting on the requirement to account for each day, the applicant argued that from paragraph 9,10,11,12 ,13 and 14 of the applicant's submission he had demonstrated and accounted for every delay until the day when this application was preferred. On the point that delay should not be inordinate, the applicant submitted that inordinate is a synonym to unreasonable. He went on to state that in paragraph 9,10,11,12,13 and 14 of his affidavit, he had expounded on the struggles he had to go through.

Turning to the point that the applicant must show diligence, the applicant averred that paragraph 9,10,11,12,13 and 14 of his affidavit demonstrated diligence in pursuing this application.

On existence of a point of law, the applicant asserted that there is a serious question of law to be tried in Civil Case No.192 of 2018. He insisted that the suit was aimed at determining the legality of sale of his property.

The applicant concluded his submission by a prayer that this court invokes the overriding objective principle to grant the application so that the applicant can proceed to litigate his grievances to finality. He referred this court to the case of **Felix Tumbo vs. Tanzania Telecommunications Company Ltd & Another** [1997] TLR 57 and **DT Dobie (Tanzania) LTD Vs. Phantom Modern Transport Ltd**, Civil Appeal No.141 of 2001 CAT. As well as the case of **Cooper vs. Smith** (1884 26 CL.D 760 at page 710) where it was stated among other things that the object of the courts is to decide the rights of the parties and not to punish them.

Time was ripe for the respondents to also argue against the application. The 2nd respondent came first and he too prayed to adopt his counter affidavit as part of his submissions. Needless to say, that the 2nd respondent strongly objected the application as summarized below.

Starting with the applicant's submission that the reason for his delay was late supply of a copy of dismissal order and the refusal of instruction by his advocate, the 2nd respondent's counsel objected by arguing that the applicant had to show sufficient cause for the court to grant extension as it was discussed in the case of **Tanga Cement Company Limited v.**

Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No.6 of 2001.

The learned counsel submitted further that the applicant must account for each day of the delay and the delay should not be inordinate. He invited this court to the case of **Lyamuya Construction Company Limited v Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010, CAT Arusha (unreported).

Arguing against the point that the applicant's advocate had refused instruction, Ms. Josephine Safiel submitted that no letter for withdraw of instruction had been attached to this application thus the reason lacked proof. To cement her argument, the learned counsel invited this court to the case of **Vedastus Raphael v. Mwanza City Council & Others**, Civil Application No.594/08 of 2021 where it was held that ignorance of the law or procedures involved in doing something does not constitute good cause to warrant extension of time.

The learned counsel for the 2nd respondent averred that since the court order attached as annexure A-3 indicated that the suit was dismissed due to the plaintiff's failure to attend and prosecute the same, it was indicative of negligence hence granting him an order for extension

to file an intended application would prejudice the rights of the respondent who had been careful in prosecuting the matter. Basing on what she submitted the counsel's prayer is the application to be dismissed with cost.

Submitting against the application, counsel for the 3rd respondent, likewise, prayed to adopt his counter affidavit as a part and parcel of his presentation. The 3rd respondent submitted that as it could be seen from the court's records in Civil Case No.192 of 2018, the matter was struck out at the 1st PTC stage which had finally come after more than 9 months of frequent adjournments due to various excuses given by the applicant.

It is the learned counsel's submission that the court had applied **Order VIII B Rule 20(1)(a) of the CPC** to arrive to the order for dismissal of the suit. The learned counsel for the 3rd respondent opined that the application was baseless because the applicant was an impersonator. He explained that the person appearing before the court posing as Ramadhani Shabani was Kassanga Shabani Hassan. He invited the court to take appropriate measures including initiate criminal proceedings against Mr. Kassanga for fraud and impersonation.

Finally, the 3rd respondent's counsel prayed that the application be dismissed with costs.

Having carefully considered the rival submissions by both sides, the task on my desk is to determine whether sufficient cause has been established to warrant this court to grant the applicant's prayer.

It is elementary law that granting an application for extension of time is the court's discretion. The applicant must, as a matter of procedure, establish that he had good or sufficient cause for delay which would warrant for extension of time, and unless the court is satisfied that there was reason sufficient or good cause for the delay the prayer would normally not be granted.

In this application the dismissal order was delivered on 05/05/2021. On 24th May 2021 the applicant was served with a copy of the ruling. Up to that date he was late for nine days. However, he did not file his application until 16 June 2021- more than 20 days out of time. It goes without saying that it is upon the applicant to advance good cause for his delay explaining what transpired on each of the days in question.

In a plethora of case law authorities, good cause has been interpreted to mean the following but not limited to whether the applicant had accounted for all days delayed, whether the delay is inordinate or not, whether the applicant has shown diligence, and not apathy negligence or sloppiness in prosecution of the action that he intends to be taken. Last

but not least, if the court feels that there is any point of law of sufficient importance such as the illegality involved in the decision sought to be challenged.

In the case of **Mohamed Suleman Ghona Vs. Mahmoud Mwemus Chotikungu**, Civil Application No. 179/01/2020 CAT - DSM, it was held inter alia that;

*"In determining if good cause has been disclosed, the court has consistently taken into account considerations such as:-
i) The cause of delay involved ii) The length of the delay, iii) The conduct of the parties, iv) The degree of prejudice if any that each party suffers depending on how the court exercises its discretion, v) The need to balance the interest of a party who has constitutionally underpinned right of appeal, and vi) Whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged."*

In this case, counsel for the applicant has emphasized on time spent waiting to be supplied with a copy of the ruling and also time spent in looking for another advocate when the previous one declined instruction. The applicant has also advanced illegality of the sale of his property as one of the reasons supporting this application adding that he intended to challenge the same.

It was stated in the case of **The Principal Secretary Ministry of Defence and Notional Service Vs. Devram Valambia** [1991] TLR 387, it thus: -

"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record straight. "

It should be noted that the decision which the applicant alleges to be illegal should be the dismissal order and not the cause of action in the main suit which was dismissed at the 1ST PTC. Therefore, the applicant submitting on illegality of the sale as a reason for the court to grant his prayer, in my considered opinion, this reason does not fall within the ambit of sufficient cause.

The other reason raised by the applicant that he was looking for another advocate is equally misplaced. The court finds it to be of no weight because there is evidence to prove that he formally had an advocate who later denied the instructions. In the applications as well as its submission, it appears that the applicant managed to do so without a formerly recognized Advocate. Therefore, if he was able to prepare the documents and file the same in this court, I don't see why he chose to search for an advocate for all that long before taking care of the then fast approaching deadline.

That said, I find that the applicant has failed to account the days he delayed, and the point of law raised as illegality has no any sufficient importance for the same to constitute good cause. In the upshot, I find the application for extension of time short of sufficient cause and therefore the same is refused.

The application is therefore dismissed. I make no orders as to costs.

It is so ordered

E.I. LALTAIKA



JUDGE

12/8/2022

