

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

MISC. CIVIL APPLICATION NO. 49 OF 2021

(Originating from DC Civil Appeal No. 14 of 2020 of the High Court of Tanzania at Dodoma, Original Civil Case No. 3 of 2018 of Manyoni District Court at Manyoni)

JESCA GENESS SHAYO APPLICANT

VERSUS

1. CRDB BANK PLC

2. ABDALLAH KITIKU

..... RESPONDENTS

RULING

18/7/2022 & 9/8/2022

MASAJU, J

The Applicant, Jesca Geness Shayo, has filed in the Court a Chamber Summons Application made under section 14 (1) of the Law of Limitation Act [Cap. 89 RE 2019] praying the Court to extend time for her to file an Application to set aside dismissal order in respect of (DC) Civil Appeal No. 14 of 2020 by the Court (Mansoor, J). The Application is supported by an Affidavit sworn by the Applicant herself.

The 1st Respondent, CRDB Bank PLC, contests the Application. She filed a Counter Affidavit in the Court. The 2nd Respondent, Abdallah Kitiku did not file Counter Affidavit, if any, in the Court.

When the Application was heard in the Court on the 18th day of July, 2022 the Applicant was presented by Mr. Cheapson Kidumage, the learned counsel. The 1st Respondent was represented by Mr. Hussein Jeremiah, the learned counsel while the 2nd Respondent appeared in person and supported the Application.

The Applicant prayed to adopt her Affidavit to form submissions in support of the Application. The Applicant added that the paramount reason for the Application has been deponed in paragraph 10 of the Affidavit. That, since the delay was not negligently occasioned by the Applicant on her own but by her Advocate, thus the prayers that the Application be granted accordingly for by then she was indisposed as per paragraph 7 of the Affidavit. That, she should not be condemned by the mistake done by her then Advocate.

The 1st Respondent contested the Application as she prayed to adopt her Counter Affidavit to form part of her submissions against the Application. She added that the Application should be dismissed with costs since the Applicant has failed to give sufficient reasons for her being behind the time line as per reasons so deponed in the 6th, 7th, 8th, 10th and the 11th paragraphs of the Counter Affidavit.

That is what was shared by the parties in support of, and against the Application in the Court.

The Applicant's Affidavit reveals that, (DC) Civil Appeal No. 14 of 2020 was dismissed by the Court for want of prosecution on the 17th day of September, 2020. That, after the Applicant got the information, she instructed her then Advocate to file an Application for setting aside the dismissal order. That, on the 9th day of November, 2020 the Advocate filed

Miscellaneous Civil Application No. 32 of 2020 which was dismissed for being time barred (Annexure 'A5'), hence this Application in the Court.

The main reason for the Applicant's delay in filing her intended Application for setting aside the dismissal order by the Court is her Advocate's negligence in filing the same within time. The Applicant who was by then sick as per the documentary proof (Annexure A4) attached to the Affidavit, entrusted her Advocate who is based in Morogoro to file the intended Application for her to pursue her right. But the said Advocate filed Miscellaneous Civil Application No. 32 of 2020 which was dismissed by the Court for being filed out of time. Hence the Court can not condemn the layman Applicant for her Advocate's mistakes and negligence.

The Applicant has been all along keen in pursuing her right since after being dissatisfied by the trial Court's decision in Civil Case No. 3 of 2018 she filed her appeal right in time which was then dismissed for want of appearance.

In her Counter Affidavit, the 1st Respondent denied the Applicant's allegations but she adduced no evidence to contradict the Applicant's allegations that the delay has been the result of her then Advocate's negligence in filing the intended Application in time.

Article 13 (3) (6) (a) of the Constitution of the United Republic of Tanzania provides for the right to be heard, that is to be taken into account by the Courts in determination of the rights and duties of persons in pursuit of dispensation of justice in the United Republic.

In the instant case, the matter has not been heard on merit before the Court, hence the Court's position that for the Applicant to exercise the right

to be heard by the Court, she needs to file the intended Application for the Court to decide whether or not to set aside the dismissal order.

Thus, the meritorious Application is hereby granted accordingly. The Applicant shall file her intended Application, if any, within 30 days of this Ruling. The parties shall bear their own costs.




GEORGE M. MASAJU

JUDGE

9/8/2022