

IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. LAND APPLICATION NO. 45 OF 2019

*(Arising from the Dismissal order for Land Appeal No. 9 Of 2018 dated
9th May 2019)*

TEMANYA LUNG'UDA..... APPLICANT

VERSUS

1. MBOWO MASANJA

*(The administrator of the estate
of the late CHALYA MASANJA)*

2. MBUKE LUTAMLA

3. MBUKE CHARLES

4. SHOMA MLEMA

..... RESPONDENTS

RULING

20th & 23^d Sept, 2022

V. M. NONGWA, J.

This ruling comes upon application filed by the applicant Temanya Lung'uda, the appellant in Miscellaneous Land Appeal no. 9 of 2018 at High Court of Tanzania, Shinyanga District Registry, an appeal that was dismissed on the 9th day of May 2019 for non-appearance. Upon dismissal and lapse of time for him to apply for restoration of his appeal, he had to file this application under section 14 (1) of the Law of Limitation Act, Cap

89 R.E 2002 and Order XXXIX Rule 19 of the Civil Procedure Code Cap 33
R.E 2002 praying for the following orders;

- a. That the court be pleased to extend time for filing an application to restore Miscellaneous Land Appeal no. 9 of 2018
- b. The court be pleased to re-admit Miscellaneous Land Appeal no. 9 of 2018 that was dismissed on the 9th day of May 2019 for non-appearance
- c. Costs
- d. Any other and further relief (s) as the Court may deem just to grant.

The application has been accompanied with an affidavit of the learned counsel Frank Samwel who is also the applicant's advocate. The respondents were unrepresented and the administrator of the estate of the late Chalya Masanja, one Mbowo Masanja who is the first Respondent, appeared on the hearing date. At the hearing of the application, advocate Mr. Frank Samweli stated that the application contains two prayers for extension time within which to apply for restoration of the Land appeal No. 9 of 2018 and the second prayer, if the court will find that there are good reasons for the restoration of the said Appeal then, the appeal that was dismissed on 9th May 2019 be restored.

The learned counsel explained further that the said Appeal originated from Ward Tribunal, of which was to be filed at District Land and Housing Tribunal at Shinyanga as per the law and District Land and Housing Tribunal was the one to forward the same to the High Court. The applicant filed his appeal 8/7/2015, at Shinyanga District Land and Housing Tribunal.

The appellant made follow up and at that time Shinyanga Registry was yet to commence business. In the cause of following up he was told

to wait until he was to be summoned. On 20th June 2018, the Applicant decided to write requesting for the status of the appeal as the file was still at District Land and Housing Tribunal, however, there were no reply. That the Applicant went on following up until 9th October 2019, when he received summons for execution, showing that it was for hearing on 21st October 2019. Upon attending hearing, he asked for his appeal that is when he was told that his appeal was at Shinyanga High Court Registry and that the same was dismissed on the 9th May 2021.

The learned counsel went on stating that, from the proceedings neither party ever attended the appeal and the applicant was only surprised to find out that the other party was aware of the dismissal. That the applicant started looking for copy of the dismissal order, and started to prepare the application for extension of time within which to apply for restoration of the appeal and the same was prepared on the 8th November, 2019 endorsed on the 11th and amendment to the pleadings were done as the Respondent died and consequently the administrator was appointed.

The Learned Counsel Mr Frank Samwel insisted that the applicant managed to account for each day of his delay in presenting his application as the law requires, he prayed for the extension of time within which to apply for restoration of the appeal that was dismissed to be granted for the reason that the applicant's failure to attend his appeal, was due to being unaware of the status of his appeal.

In his reply to the applicant's submission, Mr. Mbowo Masanja, the administrator of the estate of the late Chalya Masanja contended that the applicant and his advocate are the ones who filed their appeal and decided not to make follow up of the same, and that the allegation that he was

not attending court was unfounded because he had been attending all the time. He insisted that the advocate was seeing him most of the time as they had another case, and he was aware that the appeal comes in November from the summons that were served upon him.

In his rejoinder, the learned counsel Mr. Frank Samwel, insisted that it was not true that they abandoned the appeal, it is a procedure that they were to file appeal at District Land and Housing Tribunal for them to transfer the file to the High Court as per the law, the District Land and Housing Tribunal have contributed a lot to the dismissal of their appeal for they did not inform the applicant.

That in relation to another case that the 1st respondent claims to have been withdrawn, he only became aware of the appeal dismissal when he was served with summons for execution case. That the execution case was proceeding at District Land and Housing Tribunal while the appeal was alleged to be pending at the High Court.

I have carefully considered submissions and arguments from both sides and before deciding whether this application should fail or succeed, I wish to state quite clearly that it is a common law that an order for extension of time may be granted by the Court in the exercise of its discretionary powers. I humbly follow the reasoning of the Court of Appeal in the case of **Yusufu Same and Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002 CAT at Dar es salaam** (<http://tanzlii.org>), the court stated that;

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judiciously, and

the overriding consideration is that there must be sufficient cause for so doing. What amounts to 'sufficient cause' has not been defined. From decided cases, a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence on the part of the applicant, does not amount to sufficient cause".

Moreover, the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each case under consideration and the ground might not be similar.

There is no a precise definition of what amounts to reasonable cause, however I borrow what was stated in the case of **Felix Tumbo Kisima vs. Ireland Another (1997) TLR 57** where the court observed that;

"It should be observed that "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons or cause which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps."

According to the Application before me, the main reasons for prayer for extension of time to file an application for restoration of an appeal that was dismissed by this court are found under paragraph 5, 6, 7, 8, ,11,12 and 13 of the applicant's affidavit and those reasons being that, having filed his appeal at the District Land and housing Tribunal of Shinyanga, he made several follow up to see if the same has been processed and forwarded to High court Tabora District Registry, and that all efforts did not bring positive results as to the status of his appeal. That, despite of the letter he wrote to the District Land and housing Tribunal, for the same

purpose of knowing if the appeal has been forwarded to Tabora, there was no response, the copy of the letter has been attached in the affidavit.

That it was on the 9th October, 2019 when he was astonished to be served with summons concerning execution proceedings at the tribunal in respect of the said decision that he had appealed at and it was on the hearing date of the said execution when he asked about his appeal only to be told that the same was dismissed on the 9th May 2019 for non-appearance of either party before the high court at Shinyanga District registry. That at the time the applicant got information about the dismissal, time to file for re admission of the appeal had already lapsed and that the delay was not intentional.

Before going further, I wish to make it clear that from the records, the intended appeal to be restored to this Court is the Misc. Land Appeal No. 9 of 2018 dismissed on the 9th, May 2019 and it is obvious that at the time the applicant was processing his appeal against the decision of the Land and Housing Tribunal, in Land Case Appeal no. 51 of 2014, delivered on the 20th May 2015, High Court Shinyanga District Registry was yet to start business. This is because the Registry started to operate in November 2015 as such I do not find any justifiable reason not to believe what the applicant considers to be a reason for his delay in prosecuting his appeal as well as applying for restoration of the dismissed appeal within time. I consider it to be a sufficient cause for this court to grant the applicant with the prayers sort.

I have also considered the submission by the applicant counsel that neither party ever attended the said appeal, it is evident from the records that neither party ever appeared in the said appeal despite of the appeal being pending in the registry for almost a year, and no evidence that

summons were affected to either party to the time the matter was dismissed and return of the lower tribunal records on the 29th September 2019.

From the records and in particular the memorandum of appeal, the appeal that was filed at the tribunal on the 8th July 2015, for the same to be forwarded to Tabora High Court Registry by then, unfortunately the same is seen to be received at High Court Shinyanga three years later, and has been pending without either party attendance until the date it was dismissed for non-appearance of the parties. All those circumstances made the applicant a victim of circumstances because it was not his fault and he even managed to make follow up through letters that were written by his advocate as seen in the records.

The applicant in this application has found shelter under the Law of Limitation Act, Cap 89 in particular section 14 (1) which provides that;

"S. 14-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

For clarity subsection (2) of section 14 the same Act provides that for the purposes of section 14, the court means the court having jurisdiction to entertain the appeal or, as the case may be, the application. This court finds merit in the applicant's application for extension of time within which to apply for the restoration of the appeal that was dismissed.

The law under Order XXXIX Rule 19 of the Civil Procedure Code Cap 33 permits for the appellant whose appeal has been dismissed for non-appearance on the hearing date to apply to the Court for the re-admission of the appeal for the reason that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing and the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

From the foregoing reasons, the applicant has managed to show sufficient cause for his delay in applying for restoration of the appeal that was dismissed in his absence and without being informed by summons or any other means, and by reason of Shinyanga High Court District Registry separating its business from Tabora High Court Registry, it is obvious for the situation like this to happen of which should not be at the detriment of the applicant.

The application therefore succeeds the time is hereby extended and the dismissed Appeal no. 9 of 2018, is hereby restored. From the circumstances of this application each party shall bear own costs.

It is so ordered.




V. M. NONGWA
Judge
23/09/2022