

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

AT SHINYANGA

MISCELLANEOUS CIVIL APPLICATION NO. 41 OF 2021

*(Arising from civil case no13 of 2017, at the High Court of Tanzania
Shinyanga District Registry before Matuma)*

IBUKA MULTIPURPOSE

COOPERATIVESOCIETY LTDAPPLICANT

VERSUS

THE BOARD OF TRUSTEES OF THE NATIONAL

SOCIAL SECURITY FUNDRESPONDENT

RULING

Last Order: 18/11/2022
Ruling Date: 08/12/2022

MASSAM, J.

This application is brought under Section 14 (1) of the Law of
Limitation Act Cap 89 R.E 2019 and section 95 of the Civil Procedure Act



Cap 33 R.E 2019 and any other enabling provision of law. The applicant sought leave for extension of time to file review of the Civil case no. 13/2017. The applicant's application is supported by an affidavit sworn by Mkama Kadidi Musiba the Manager of the applicant. The application is opposed by the respondent who filed a reply to the Affidavit sworn in by Mr. Kalenda the State Attorney for the respondent in this application.

Briefly, it goes thus, in the civil case no 13 of 2017 the respondent (plaintiff) filed this case before Matuma, J praying for judgment and decree against the defendant that the defendant (applicant) to pay plaintiff (respondent) the outstanding arrears of statutory contribution amounting to Tshs 644,594,133.6, also to pay interest at the court rate from the date of the judgment until full payment, costs of this suit and other reliefs this court may deem fit and just to grant, on 23rd day of March 2022 the matter came for settlement after the parties agreed the same that the defendant to pay the plaintiff a total sum of Tshs 99,902,589.36 being the statutory contribution and penalty payable to the plaintiff by the defendant, also the parties agreed the payment shall be in monthly instalment for the period of six months effectively from February 2022 to July 2022 and the amount will be Tshs 16,650,431.56. Record shows that the said deed was not executed



until on 27/10/2022 when the applicant (defendant) brought this application for leave for extension of time to file review. When this application was fixed for hearing, the applicant was represented by the learned counsel Mr. Mac Angelo Ishengoma whereas the respondent was represented by Mr Kalenda George State Attorney who was assisted by his fellow Mr Musa Mpogole.

Submitting in support of the application, the learned counsel for the applicant averred that he brought this application under section 14(1) of Limitation Act R.E 20219 and Section 95 Civil Procedure Code Cap 33 R.E2019 for the leave of extension of filing review, which supported with the affidavit of Mkama Musiba a Senior officer of applicant, he pray the said affidavit to be admitted as a part of the submission, he added that the said application raised from decision delivered on 23/3/2022 before Matuma J from deed of settlement ,he said that even though there was a deed of settlement applicant was owned Tshs 644,597,183.64 and in between when the matter was in court the applicant paid amount of Tshs 461,777,860.78 and remaining with the debt of Tshs 182,321.86,he added that on 28/10/2021 applicant wrote a letter to the respondent praying for the clarification on how the said amount of Tshs 461,777,860 was distributed to the employee but the said letter was not replied on time it



was replied after the filed of deed of settlement and its when the applicant finds some errors in the amount of money paid in the distribution which become the new facts and he was out of time to file review, he said that the claim in the said civil case no 13/2017 was from February 2014 to May 2017, the reason which made him to file extension of time is because of the late reply on 1/9/2022, so he pray to be granted the extension of time to file review in inclusion of the new facts.

Mr. Kalenda State attorney in his reply said that he heard the applicants submission according to section 14(1) of the Limitation Act, he agreed that the said section gives power to the respondent to extend time when the court finds the sufficient cause to grant the same, as elaborated to the case of **The Registered Trustees of the Archdiocese of Dar es salaam Vs The chairman Bunju village Government and 11 others** civil appeal no 147/2006 in page 8 and 9 Court of Appeal said that the sufficient cause must be in accordance with judicial principles so in this case the sufficient Cause was mentioned but the time for delay the law direct it to be 60 days, the applicant was supposed to mention the sufficient cause made him not to file the review for more than 150 days as insisted in the case of **Mwandu Gweku and Another Vs the Attorney**



General in Misc. criminal revision no 4 of 2018 in page 2 para 2,also in the case of **Lyamuya Construction co Ltd Vs Board of Registered Trustee of Young Women's Christian Association of Tanzania** Civil application no 2 of 2010 pg. 6 para 3 applicant did not account the 150 days of delay.

He also said that applicant did not tell the court why the delay exceed the normal limit, as 150 days exceed normal limit that's show that he lost interest he was not required to show negligence and sloppiness the attached letter was written on 28/10/2021 he did not get the reply still he signed the deed of settlement so coming of the applicant with this application is after thought after the respondent come up with execution this court is in view that applicant was negligence as elaborated in the case of **Elias Kahimba Tibenderana Vs. Inspector** civil application no 388 of 2020,he added by saying that the applicant in this case exercise negligent and the matter required to be dismissed after the prove of negligent as elaborated in the case of **Jubilee insurance company limited (T) Vs. Mohamed Sameer khan** civil application no 439 /01 of 2020 in this case the matter was dismissed after the court found out no sufficient cause was shown.



Again, he said that **in Lyamuya's case** the court held that if the court find that there are other sufficient reasons such as existence of point of law that decision to be challenged the court can grant the same, but in this application, applicant fail to bring any point of law which was important to challenge the court decision. He also said that because the applicant failed to do so the application supposed to be dismissed as elaborated in the case of **Fortunatus Lwanyantika Masha and Another Vs. claver Motors Limited** civil appeal no 144 of 2019 in para 1 the court held that the communication which was done between the parties before is not a reason for being out of time.

Also, he said that this court not to consider the submission in the applicant affidavit that he has a greater chance to succeed as in the case of **Jubilee** in page no 16 and 17 it said that the overwhelming chances of success cannot be the one of grounds that constitute a sufficient cause, so in this case he prays that the application be dismissed with costs as the applicant failed to demonstrate the said discovery of new facts and account of each date of delay to file application for review.

In his rejoinder the applicant said that all decisions which respondent brought was distinguishable as in this present application the case which



was intended to file review was entered after the file of deed of settlement which cannot challenged by the review without discovered of the new facts, in that cases all were heard on merit. He added that the said application was brought after discovery of new facts and these new facts if was known before the said deed of settlement could not have that amount, in the issue raised of negligence he objected and say that he did some efforts by writing the letter to the respondent and the failure of the respondent to reply the said letter made this delay as there was a new facts discovered so he had the sufficient reasons.

I have given careful consideration to the arguments for and against the application herein advanced by the learned advocate for the applicant and the respondent respectively, the central issue for determination is **whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant**

In determine an application of this kind, the court has to consider whether the applicant has advanced sufficient reasons to convince the court to grant the application sought, in the side of the applicant informed this court that he has sufficient reasons to be granted extension of time to file review as his delay was caused by the failure of the respondent to reply



his letter after discovery of the new facts. However, the law of Limitation Act part III of the Schedule Item 21 column 2 gives the time limit within which a person may file review which is 60 days.

In the application at hand, I have gone through the applicant's learned advocate submissions and indeed revisited the applicant's affidavit specifically paragraph 6 and 7 where it is stated that the applicant failed to file application for review on time because of the respondent's failure to deliver to the applicant the detailed facts related to the payment which were made by the applicant to the respondents on the distribution of the said payment to the employees' account which he spent a lot of time communicating with the respondent's office at Kahama to verify those details but unsuccessfully until when he got assistance from headquarters and found himself out of time.

This court had time to calculate the time which the applicant delayed to file this application in the sense that the decree was given by this court on 23/3/2022 and he was to file application for review on 23/5/2022 that make a statutory time of 60 days. For the reason advanced by the applicant that he spent a lot of time communicating with respondent to verify the details related to the distribution made to the employees on the paid



amount, he came to court and file this application on 27/10/2022 that makes a time of the delay of 210 days

In determination as to whether the applicant managed to move this court, the law is settled and clear that the applicant must come to the court with sufficient reasons, account for each day of delay that means that the applicant is required to account for each day of delay from 23.05.2022 when his statutory time ended to 27.10.2022 when he filed this application as it was well elaborated in the case of **Dar es Salaam City Council Vs. Group Security Co. LTD, Civil Application No. 234 of 2015 CAT at Dar es Salaam**, where it was stated that: -

"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for every day of the delay."

In the present application, it is expected that the applicant could have account for each day of delay but he failed to do so and continue to inform this court that his failure was caused by respondent who failed to varnish the detailed related to the distribution made to their employees on the paid amount to the respondent, so he took a lot of time communicating



with the respondent, this court is not agree with Mr. Mack Angelo advocate on the said issue as this court is aware that it is settled that communication or negotiations between the parties is not the ground of stopping the running of time, as elaborated in the **case of Consolidated Holding Corporation Vs Rajan Industries Ltd and Another** Civil Appeal no 2 of 2003 in this court stated that the time taken in negotiations does not fall under specified ground warranting exemption from limitation ,also this issue is supported in the case of **Makamba Kigome and another Vs Ubungo Farm Implements Limited and PRSC Civil Case no. 109 of 2005 (unreported)** Kalegeya J as he then was said negotiations or communication between parties did not impact on limitation of time.

This court is in view that if the applicant trying to show this court that communication which he was made between him and respondent make the good reason to be granted the extension prayed at least the applicant could come up with the strong prove that he communicated with the respondent in different times and in different means of communication like letters or emails but this court succeeded to get only one letter dated on



28/10/2021, this means that since the delivery of decree on 23/3/2022 applicant did nothing concerning this issue.

The principle of accounting each day of delay has been also emphasized in the case of **Juma Shomari Vs Kabwere Mambo**, Civil Application No. 330/17 of 2020 CAT at Dar es Salaam, where it was stated that: -

"It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application."

This position has been pronounced in various decisions of the Court of Appeal, few of which are in the cases of; **Hassan Bushiri Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Ludger Bernard Nyoni Vs. National Housing Corporation**, Civil Application No. 372/01 of 2018 (All unreported).

Basing on the principle above, it is my findings that the applicant did not account for each day of delay for the following reasons, First, I agree with the respondent that the applicant lost interest in this matter because



he was silent from 23/3/2022 when the said decree was given to 27/10/2022 when he came to the court to file this application, so this court is agree with the respondent submission that the applicant application was afterthought as the applicant informed this court that there was a pending application for execution before Deputy Registrar. Second, he failed to tell this court why he decided to agree to sign the said deed of settlement before received the response of his letter dated on 28/10/2022 from the respondent, but also he failed to tell this court the new facts which he discovered which cause his intention to challenge the said deed of settlement.

Thirdly he failed to bring to this court the proof to show that he made a lot of communication with respondent, in the court record this court find only one letter which dated on 28/10/2021 asking the details facts related to the payment which were made by the applicant to the respondent on the contribution of the said payment to the applicant's employee's account.

In the final analysis, I find that the applicant has failed to account for each day of delay and show a good cause upon which this Court can exercise its discretion to grant extension of time to file application for review. So according to the above mentioned reasons, this court find the.



The application is thus devoid of merit and it is hereby dismissed. No order as to costs.

It is so ordered.

DATED at **SHINYANGA** this 8th of December 2022




R.B. Massam
JUDGE
08/12/2022