

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

**MISC. LAND APPLICATION NO.69 OF 2023
[Arising from Land Appeal No. 125 of 2015]**

**JOHN BONIPHACE (*Administrator of the Estates
of KOBIRO BONIPHACE*)-----APPLICANT**

VERSUS

MAZERA KABAZI -----RESPONDENT

RULING

Sept. 13th & 22nd 2023

Morris, J

The Court is, at the instance of the applicant above, being moved to determine the application for extension of time so he can file an application to set aside dismissal order of this court in appeal number 125 of 2015. The application is opposed. For and against the application the respective affidavits of parties herein were filed.

Briefly, the record tells that, the respondent above sued the late Kabiro Boniphace before Kukirango Ward Tribunal (application No. 8 of 2013). He alleged that the latter had trespassed on his land which he purchased from



one Tabu Wambura (the **suit property**). The trial tribunal ruled in favor of the deceased. The respondent herein successfully appealed to the District Land and Housing Tribunal for Mara at Musoma (DLHT) vide Land Appeal No. 167 of 2014. This time, he was declared the lawful owner of the suit property effectively from 28/5/2015.

In purview of his affidavit, the applicant is the administrator of the estate of late Kabiro Boniphace. That is, the deceased filed appeal No. 125 of 2015 and died before its determination. However, this Court dismissed the said appeal for want of prosecution. It is deponed further that the applicant was appointed by Kukirango Primary Court on 9/9/2022 to administer the estate of the deceased. He, however, alleges that he was unaware of the said dismissal until 21/06/2022 when they were served with an application for execution No. 158/2022 of Musoma District Land and Housing Tribunal. Both the affidavit and the counter affidavit indicate nothing as to when this Court dismissed the appeal. The said order was also not attached. But this fact was admitted by paragraph 3 of the counter affidavit. Records further reveal that on 9/9/2022 the DLHT granted an



application for execution (Misc. Application No. 168 of 2022). Therefore, the envisaged appeal was dismissed before 9/9/2022.

During hearing both parties were not represented by advocates. The applicant, prayed to adopt her affidavit and submitted that the former administrator, one Nungu Kisute, abandoned his role. Therefore, the appeal was unattended. Nevertheless, he adds that he did not file this application after appointment in September 2022 because he was making follow-up at Musoma Registry only to be told that the file is before this registry.

In reply, the respondent adopted the counter affidavit too. He submitted that this application was an afterthought following execution proceedings. In rejoinder submissions in chief were reiterated.

From the affidavits and submissions by the parties, the Court will determine the application by answering one question: *whether or not ground advanced by the applicant suffice in making this court to allow the application*. The only reason is that he was unaware of the said appeal until when they received the respondent's application for execution filed on 21/06/2022.



The law requires that the applicant should demonstrate sufficient reason(s) as to why he/she did not take the necessary step(s) in time. In so doing, he/she will discharge the obligation of proving how each day of delay justifiably passed by at no applicant's fault. Accordingly, the subject applicant will deserve a favorable Court's discretionary advantage as it was held in ***Hamis Babu Bally v The Judicial Officers Ethics Committee and 3 Others***, CoA Civil Application No. 130/01 of 2020 (unreported).

The essence of setting the time limits in law is, among other objectives, to promote the expeditious dispatch of litigation, [***Costellow v Somerset County Council*** (1993) IWLR 256]; and to provide certainty of time tables for the conduct of litigation [***Ratman v Cumara Samy*** (1965) IWLR 8]. It is undisputed that the applicant was appointed as an administrator of the estates of the deceased on 9/9/2022. Therefore, before that time, he had no *locus standi* to make any follow-up of the said dismissed appeal.

Under paragraph 7 of his affidavit, the applicant averred that he was served with an application for execution filed on 21/06/2022. Thus, it is undisputed that he knew the presence of the said execution before his appointment. I have arrived to that conclusion because the execution order



is dated 9/9/2022. Therefore, service was made before that order. In his affidavit, no statement on how he spent days from 9/9/2022 until 21/7/2023 when this application was filed. In his submissions, however, he argued that after appointment, he was making follow-up at Musoma registry before he found out that the file is before this Court. That information came from submissions which are not evidence. Submissions are not evidence. Refer to ***Registered trustees of Archdiocese of Dar es Salaam v The Chairman, Bunju village Government***, Civil Appeal No.147 of 2006; and ***Ison BPO Tanzania Limited v Mohamed Aslant***, Civil Application No. 367/18 of 2021 (both unreported).

Moreover, it is cardinal principle of law that, one applying for extension of time must account for each and every day of the delay. In the case of ***Hassan Bushiri v Latifa Mashayo***, Civil Application No. 3 of 2007 (unreported), the Court held 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*". See, also, the cases of ***Yazidi Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & Another***, Civil Application No. 412/04 of 2018; ***Sebastian Ndaula v Grace***

Rwamafa (legal personal representative of Joshua Rwamafa), Civil Application No. 4 of 2014; **Dar es Salaam City Council v Group Security Co. Ltd**, Civil Application No. 234 of 2015; and **Muse Zongori Kisere v Richard Kisika Mugendi**, Civil Application No. 244/01 of 2019, (all unreported).

In this application, the applicant failed to account for 9 months and 12 days of delay. For that reason, I find this Court not sufficiently moved to extend time as prayed by the applicant. The application, thus, lacks merit. It is accordingly dismissed. Each party to shoulder own costs. It is so ordered.



C.K.K. Morris

Judge

September 22nd, 2023

Ruling delivered this 22nd day of September 2023 in the presence of John Boniphace and Mazera Kabazi, applicant and respondent respectively.



C.K.K. Morris

Judge

September 22nd, 2023

