

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. LAND APPEAL NO.13 OF 2022**

*(Arising from the High Court of Tanzania at Mtwara in Land Appeal No.17 of 2020 and originating from the decision of the District Land and Housing Tribunal for Mtwara in Land Application No.159 of 2020)*

**SOMOE ATHUMANI MTAPALUNDA.....APPLICANT**

***VERSUS***

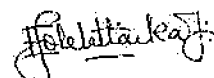
**SELEMANI RASHIDI CHIOLORA.....RESPONDENT**

**RULING**

*30/11/2023*

**LALTAIKA, J.**

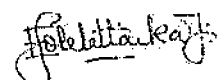
The applicant, **SOMOE ATHUMANI MTAPALUNDA**, is seeking extension of time to set aside the dismissal order of this court out of time. The applicant has moved this court under section 14(1), (2) of the Law of Limitation Act [Cap.8 R.E. 2019]. The application has been supported by an affidavit affirmed by the applicant. It is worth noting that the respondent has not filed a counter affidavit to resist the application.



For easy understanding of the matter at hand, the historical background is necessary and imperative. The applicant was sued by the respondent before Jangwani Ward Tribunal. After hearing the parties, the Ward Tribunal decided in favour of the respondent. In executing the decision of the Ward Tribunal, the respondent lodged Misc. Land Application No.115 of 2017 before the District Land and Housing Tribunal for Mtwara (DLHT). However, the applicant went to the same DLHT and filed Misc. Land Application No.159 of 2020. In that matter, the applicant prayed for revision of the decision of the Jangwani Ward Tribunal. The applicant's matter encountered a preliminary objection of time limitation. Thus, the DLHT for Mtwara decided in favour of the respondent by dismissing the matter under section 3(1) of the Law of Limitation Act [Cap. 89 R.E. 2019].

Again, aggrieved with that decision of the DLHT the applicant instituted Land Appeal No.17 of 2021. When that appeal was called on for hearing on 15.10.2021 only the applicant had appeared in person and unrepresented. The applicant prayed this court to grant her an ex-par-te hearing which indeed was granted. Furthermore, the applicant prayed another prayer that the appeal be heard by way of written submission. The prayer was granted and was ordered to file her written submission on 22/10/2021.

Needless to say, the applicant never complied with order of filing her written submission supporting her appeal. Thus, this court treated such a conduct had tantamount to nonappearance or failure by the applicant to prosecute her case. This court took that position which was articulated by the Court of Appeal in the case of **P3525 LT Idahya Maganga Gregory**



**v. The Judge Advocate General**, Court Martial Criminal Appeal No.2 of 2002 (unreported). Consequently, this court dismissed the appeal for nonappearance or failure to prosecute the case.

When this matter was called on for hearing, the applicant appeared in person, unrepresented. When the applicant was invited to address this court on the application, at the outset she submitted that the respondent has never been to court for almost a year now. The applicant moved on and contended that she is applying for extension of time to set aside a dismissal order as appears in the Chamber Summons. She insisted that when this court made the decision, she was not aware of the judgement of this court delivered by Hon. Dyansobera J. in Land Appeal No.17 of 2021.

Furthermore, the applicant stressed that they were there when they appealed to this court. However, they did not understand the decision of the Hon. Judge. The applicant submitted that she is not satisfied hence, this application.

I have dispassionately considered the application and submission of the applicant. It is noteworthy that the main issue to be considered by this court is whether the application has merit or not. However, it is trite law that an application for extension of time is entirely in the discretion of the court to grant or not. In the case of **Lyamuya Construction Co. Ltd. vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No 2 of 2020 [2011] TZCA4, the Court of Appeal of Tanzania stated that:-



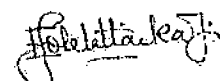
*"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily..."*

Therefore, in the instant application the main reason for delay, as outlined in paragraph 9 of the affirmed affidavit, is sickness and attendance at the clinic for checkup. The applicant averred further that she was diagnosed with Tuberculosis. For easy of reference paragraph 9 of the affirmed affidavit provides: -

*"That there were (sic) no any submission filed on that date but this was due to reasons that the applicant here in was attending checkup because she is diagnosed with Tuberculosis copies of medical sheets are attached and marked as annexure P1 and leave of this honourable court is craved for them to form part of this affidavit."*

Furthermore, extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient or good cause. The next issue I am inclined to resolve is whether or not the reason stated by the applicant for delay amounted to good cause. Our law does not define what amount to good/sufficient cause. However, in **TCCA Investment Company Limited vs DR. Gideon H. Kaunda the Court of Appeal of Tanzania** cited with approval the decision of the Erstwhile Court of Appeal for East Africa in the case of **Shanti v. Hindochie and Another** [1973] E.A. 207. the Court stated:-

*"... the more persuasive reason . . . that he cans show is that the delay has not been caused or*



*contributed by dilatory conduct on his part. But that is not the only reason."*

In addition, in **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007 (unreported), it was held:-

*"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."*

I am also aware that the Court of Appeal of Tanzania is always emphasizing on the guidelines which need to be considered in establishing good/sufficient cause. The guidelines were stated in **Lyamuya Construction Co. Ltd. vs. Board of Registered Trustees of Young Women Christian Association of Tanzania** (supra). The Court stated that:-

*"On the authorities however, the following guidelines may be formulated:-*

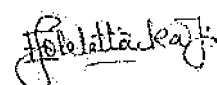
- (a) The applicant must account for all the period of delay
- (b) The delay should not be inordinate
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

Heleltankat

In view of the above reason, it is apparent that the delay was caused by factors beyond the ability of the applicant to control and cannot blame on him. It is well known worldwide that tuberculosis as a disease cannot be diagnosed within a shorter period of time. Furthermore, people suffering from tuberculosis need great attention from those taking care of them. In the instant matter, the applicant filed this application on 25/5/2022 as per Payment Control Number: 991400659269. However, the dismissed decision was delivered on 19/11/2021. While our law has provided thirty (30) days to bring an application of this nature. Therefore, from 19/12/2021 to 25/5/2022 there are almost 126 days. Thus, 126 days is equivalent to four months and two days. In the present application, the applicant has delayed for 126 days which she ought to account for each day of her delay.

As I have intimated earlier that tuberculosis as a disease cannot be diagnosed within a shorter period of time. The reason is that TB patients need intensive evaluation and follow up for the medical institutions and those residing within them. To this end, I am convinced that the period of delay of 126 days as per the circumstances of the applicant is not inordinate. More so, applicant needed enough time to undergone medication thus, in the light of the nature of the disease affected her the delay of 126 was covered by the period the applicant was undergoing medication.

Based on this observation, I can safely state that the applicant has advanced good cause for her delay to lodge her application out of time. The chain of events explained in the applicant's affidavit, as well as her oral submission, shows that in spite of inability to follow up on her case due to



the circumstances beyond her control as a patient of tuberculosis, she has not given up.

I am fortified that the applicant has not displayed apathy, negligence or sloppiness in the prosecution they intend to take, as emphasized in the case of **Lyamuya Construction Co. Ltd. vs. Board of Registered Trustees of Young Women Christian Association of Tanzania** (supra).

Before I pen off, the applicant herein is a laywoman who is not conversant with our laws. As far as the nature of this application is concerned, the applicant ought to apply for extension of time to file an application for re-admission of appeal dismissed for her default not an application for setting aside the dismissal order. Meanwhile, an application for re-admission of appeal for default is premised on O. XXXIII Rule 19 of the Civil Procedure Code. The matter which was dismissed by this court on 19/11/2021 was Land Appeal No.17 of 2021. The dismissed matter was not heard on merit but was dismissed on default of applicant to file her written submissions. However, an application may be brought to setting aside an exparte judgement or decree which resulted from the matter heard exparte and on merit.

Therefore, by virtue of the overriding objective, I find and conclude that the applicant has provided good/sufficient reasons for the delay, warranting this court to exercise its discretion in granting the requested extension of time. Therefore, the applicant is hereby granted thirty (30) days from the date of this ruling to lodge her Application for re-admission of dismissed appeal of Land Appeal No.17 of 2021.



It is so ordered.



**E.I. LALTAIKA  
JUDGE  
30.11.2023**

**Court:**

This ruling is delivered under my hand and the seal of this court on this 30<sup>th</sup> day of November 2023 in the presence of the applicant who has appeared in person and unrepresented and in absence of the respondent.



**E.I. LALTAIKA  
JUDGE  
30.11.2023**