

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 8 OF 2022

CHARLES MASANJA.....APPLICANT

VERSUS

KIKUNDI CHA TUMAINI NDUKU KINAGA RESPONDENT

[Application from the Decision of High Court of Shinyanga at Shinyanga.]

(E. Mkwizu, J.)

dated the 24th day of August, 2021

in

PC Civil Appeal No. 03 of 2021

RULING

21st September & 28th December, 2023.

S.M. KULITA, J.

This is an application for Extension of time. It has been filed by the Applicant by way of chamber summons in terms of the provisions of sections 14(1) of the Law of Limitation Act [CAP. 89 RE 2019]. In the chamber summons, the Applicant prays for this Court to grant extension of time to file an application to set aside a dismissal order by Hon. Mkwizu, J. dated 24th August, 2021 for the PC Civil Appeal No. 3 of 2021. The

application is supported by an affidavit affirmed by Bakari Chubwa Muheza, Advocate for the Applicant, on the 13th day of March, 2023.

In a nut shell, information as can be gathered from the available records provide that, the respondent had sued the applicant herein at Kahama Primary court in Civil Case No. 110 of 2020. In that case, the respondent won and the applicant was ordered to pay him Tshs. 1,836,000/= or hand over the alleged mortgaged farm. This decision aggrieved the applicant hence, appealed to the District Court through Civil Appeal No. 30 of 2020. The District Court confirmed the trial court's decision, though it reduced some amount of money to be given to the respondent.

That decision also aggrieved the applicant. As a second bite, he appealed to this court through PC Civil Appeal No. 03 of 2021. Mr. Bakari Chubwa Muheza, Advocate, who represents the Applicant, contended that, he had lodged the High Court appeal at the first appellate court on 5th March, 2021. From thereon, he has been making follow ups seeing whether the case files have been taken to this High Court, in vain. Following been given summons to appear at the trial court on 7th March, 2022 for execution in the Civil Case No. 110 of 2020, it is when he became aware that, the High Court appeal that he had lodged at Kahama District

Court had been sent to High Court without his knowledge and the same was dismissed for want of prosecution.

On the date he became aware of the dismissal date, the same, had already been dismissed way back on 24th August, 2021. Learning that, by the time he became aware of the dismissal order by Mkwizu, J. the time for the Applicant herein to apply for setting it aside had to already passed. He has now approached this court for extension of time to set aside the said dismissal order.

While Mr. Bakari Chubwa Muheza, learned Advocate represents the Applicant, the Respondent had no representation of an Advocate but somebody Manoni Machimu Nsulwa, Chairman for the Association presented the submission on behalf of the Respondent. On 25th April, 2023, the matter was scheduled for hearing through written submissions. Both parties complied with the scheduled orders.

Submitting in support of the application, Mr. Bakari Chubwa Muheza advanced the reason for delay being that, as the applicant was aggrieved with the decision of the 1st appellate court, on 5th March, 2021 lodged the appeal at the 1st appellate court in compliance with section 25 of the Magistrate Courts' Act. He went ahead stating that, under section 26 of the said Act, the High Court Registrar was required to inform them on the

procedures to follow, but did not. To him, the applicant was not aware of his appeal at the High Court till when he became aware of the dismissal order of the appeal on 7th March, 2019. He thus prayed for this court to exercise its discretion judiciously in extension of time as per the case of **Elias Mwakalinga V. Domina Kagaruki and Others, Civil Application No. 129/17 of 2018, CAT at DSM.**

In the reply thereto, the respondent through its representative namely Manoni Machimu Nsulwa submitted that, it is the applicant who instituted an appeal to the High Court, he thus wondered as to how he failed to track his case. In addition to that the respondent submitted that, the High Court Registrar did his job, that is why the Respondent herein was informed on the coming of the case for hearing on 28th May, 2021 only to find the applicant and his advocate were absent. He went further contending that, on 24th August, 2021 the appeal was called again, but neither the applicant nor his advocate appeared on that second fixed date. To him this was negligence of the applicant. As the applicant has not accounted for days of delay, the respondent was of the views that, extension of time should not be granted.

In rejoinder, the applicant reiterated his submissions in chief. The Counsel had nothing new to add.

I have earnestly gone through the pleadings and the available records. I have also taken into consideration both parties' submissions together with their entire authorities. The issue before me is whether the Applicant has shown sufficient cause for extension of time.

The records show that, the applicant's appeal was dismissed at the High Court for his non-appearance on 24th August, 2021. As per **item 9 of part III to the Schedule of the Law of Limitation Act [Cap 89 RE 2019]**, the applicant had 30 (thirty) days to file application for setting aside the dismissal order in question. It means, the last day for him to file the said application was 23rd September, 2021. As the applicant filed this application for extension of time on 13th March, 2022, then the applicant had a total number of 171 days to account for. In his submissions, the applicant accounted only for the days before 7th March, 2022 that he was not aware of the appeal at the High Court as he was not informed by the High Court Registrar. The remaining 6 (six) days from 7th March, 2022 to 13th March, 2022 the date that this application was lodged was not accounted for. On this the Applicant may come with the argument that, it was the time for preparing the applicant's application and filing the same to Court. The issue is whether this applicant's reasons for delay are sufficient cause to warrant extension of time.

As to what amounts to sufficient cause is not yet decided but it was held in **Tanga Cement Company Ltd. V Jumanne D. Masanga and Amos A. Mwalwanda Civil Application No. 6 of 2001, CAT**, that;

"... A number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant."

Taking the fact that the applicant had lodged his appeal at the District Court of Kahama on 5th March, 2021 for it to forward the same to the High Court, connecting it with the fact that, the applicant's appeal was dismissed for non-appearance on 24th August, 2021, there is a lapse duration of 5 (five) good months. A lapse of that long period of 5 months plus 30 days which the applicant was allowed by the law to file an application, sums up to a total number of 6 (six) months. On that, I am of the opinion that, the applicant who has remained inactive without making a follow up of his appeal for such period of 6 months, has acted with lack of diligence. Had the applicant acted with diligence, he could have within that 6 months' period, realized the status of his appeal, whether it proceeds before the Judge or has been dismissed for lack of

appearance. As for this matter the applicant did not act diligently, hence the application cannot be granted.

In upshot, I find this application for extension of time to file application to set aside the dismissal order for PC Civil Appeal No. 3 of 2021, delivered on 24th August, 2021, unmeritorious. I thus proceed to **dismiss** the same. Each part to bear its own costs.



S.M. KULITA
JUDGE
28/12/2023

DATED at **SHINYANGA** this 28th day of December, 2023.



S.M. KULITA
JUDGE
28/12/2023

