

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 27463 OF 2023

**IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME
TO APPLY FOR LEAVE TO FILE AN APPLICATION FOR THE ORDERS
OF CERTIORARI, MANDAMUS AND PROHIBITION**

AND

**IN THE MATTER OF THE DECISION OF THE KINONDONI
MUNICIPAL COUNCIL MADE ON 20TH APRIL, 2023 REFUSING TO
ISSUE A BUILDING PERMIT TO THE APPLICANT**

BETWEEN

MALIK JUMA KIRENDEMO APPLICANT

VERSUS

KINONDONI MUNICIPAL COUNCIL 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

Date of last order: 28/03/2024

Date of Ruling: 03/04/2024

Matuma, J.

This application has been made under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2019 in which the Applicant is seeking extension of time within which he may apply for leave to file application for certiorari, mandamus and prohibition against the 1st Respondent's refusal to grant him a building permit.

At the hearing of this application, M/S Stella Simkoko learned advocate represented the applicant while the Respondents were jointly represented

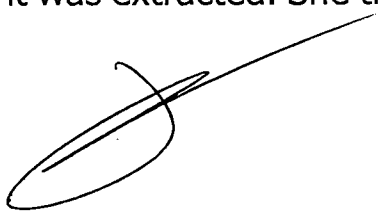


by Thomas Mahushi assisted by Johari Mkwawa both learned State Attorneys.

Submitting for this application, the learned advocate for the applicant argued that the applicant applied for a building permit from the 1st respondent but he was denied the same. That the denial of such permit was communicated to him on the 20th April, 2023. The learned advocate went on submitting that immediate after such refusal, the applicant instituted Land Case No. 279 of 2023 which was however struck out for incompetence after having contained a prayer which could only be sought through judicial Review process.

She further submitted that the delay is only fourteen days because the period available for application for leave is six months and from the date the applicant was denied the building permit on the 20/04/2023, the six months expired on 19/10/2023 while this application was filed on 03/11/2023. The learned advocate further argued that all the period of delay was honestly spent by the applicant in prosecuting the incompetent Land case which should be forgiven within the spirit of section 21 (2) of the Law of Limitation Act, supra.

Mr. Thomas Mahushi learned State Attorney who was assisted by Johari Mkwawa also learned State Attorney resisted this application. They argued that the Applicant's land suit was struck out on 24/10/2023 but this application was filed on 03/11/2023 which is nine (9) days delay unaccounted for. They cited the case of Lyamuya Constructions Limited versus Board of Registered Trustees of Young Women Cristian association of Tanzania, civil Application no. 2 of 2010, CAT at Arusha to back up their arguments to the effect that even a single day of the delay has to be accounted for. In her rejoinder, Stella Simkoko learned advocate argued that the alleged 9 days are included in the fourteen days and have been accounted accordingly under paragraph 10 and 11 of the applicant's affidavit in which it is stated that after the struck out of the land case herein above named on 24/10/2023 the applicant was given the ruling on 01/11/2023 as it is evidenced by the date when it was extracted. She therefore insisted that this application be granted.



Having heard the parties for and against this application, I find that this application deserves to be granted because I am satisfied that the applicant has sufficiently accounted for the whole period of the delay.

It is undisputed fact that immediately after the 1st respondent's refusal to grant a building permit, the applicant sued her along with others vide Land case no. 279 of 2023 supra. This was the option opted by the applicant believing that he could get the requisite remedy only to find out that land Case was not proper but rather the judicial Review Process. Had he opted to the Judicial Review process instead of a normal land case, it is obvious his application for leave could have been filed in time. This is because the facts shows that he did not sleep on his rights but took steps immediately after the denial of such building permit. Even after the struck out of such land case on 24/10/2023 to the date this application was filed, it is only nine (9) days within which the ruling striking out the suit and its extracted order was yet extracted. They were extracted on 01/11/2023 as evidenced by the extraction date on the Extracted Order. Just a day after such extraction, on the 03/11/2023, this application was filed. No any inordinate delay and according to the cited decision by the learned State Attorney, when the delay is not inordinate, that is one of the factors upon which extension of time may be granted.


I therefore find that the period within which the applicant was honestly prosecuting land case no. 279 of 2023 is a technical delay excusable while the period between the struck out of the case and when this application was filed has been sufficiently accounted for, for the reason that the ruling striking out the land case was not yet extracted and given to the applicant.

With all these, I do hereby grant this application and extend to the applicant fourteen days from the date of this ruling within which he has to file the requisite application for leave to apply for prerogative orders. No orders as to costs.

It is so ordered.


MATUMA
JUDGE
03/04/2024

Court; Ruling delivered in chambers in the presence of Mr. Thomas Mahushi learned State Attorney for the Respondents and in the absence of the Applicant



**MATUMA
JUDGE
03/04/2024**