



IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SHINYANGA SUB REGISTRY

AT SHINYANGA

MISC. LAND APPLICATION NO.202404081000007608

(Arising from Land Application No.61 of 2015 before Shinyanga District Land and Housing Tribunal)

MATHIAS NKWABI KABISIAPPLICANT

VERSUS

JUMA BULIGURESPONDENT

RULING

21/5/2024 & 31/5/2024

F.H. MAHIMBALI, J

The applicant herein had filed Land Application No.61 before Shinyanga DLHT, but the matter was withdrawn at the option of the applicant. Under paragraph 3 of the applicant's affidavit, it is alleged that on 29.2.2016 the said land application was withdrawn by the applicant's advocate (Lema) without consulting him, he is therefore unhappy with that decision, hence this application for extension of time to file revision challenging the decision in Land Application No.61 of 2015.

The application encountered a preliminary objection from the respondent that it was time barred as the same contravene section 3 (1) and part III Column 21 of the Law of Limitation Act.

During the hearing of this application, both parties appeared in person and unrepresented. Arguing for the preliminary objection and the application the respondent averred that the applicant had withdrawn the suit by himself, he is precluded from filing it again. Thus, he prayed for the application be dismissed with costs.

On the applicant side, he prayed for the application be allowed as prayed in the chamber summons and his affidavit, the same be adopted to form part of his submission.

In rejoinder, the respondent provided that his counter affidavit be adopted as well to form part of his counter arguments in the application. He finally pressed that this application is devoid of any merits, needs to be dismissed with costs.

Having heard both parties on merit, I must begin by addressing the point of preliminary objection raised by the respondent. Unfortunately, the preliminary objection was not argued by any party only the main application took the floor. However, Parties being laymen were informed that the application before the court is for an extension of time to file

revision out of time. The P.O filed is coached that the application for extension of time is time barred. Upon a thorough scanning of the preliminary objection, my determination is that the preliminary objection is misconceived. Being the application for extension of time to file revision, being brought under section 14 (1) of the Law of Limitation Act, which empowers the court with discretionary powers of extension of such time, is not barred with time after its time limit had expired. Therefore, this ground should not detain much. My conclusion is this, the preliminary objection is devoid of any merit and is hereby dismissed.

Back to the main application, the applicant is praying for extension of time to file revision against the decision in Land Application No.61 of 2015 before the DLHT, the reason put is this, he never instructed his lawyer to do what he did, and that the withdraw order done in the absence of the parties. The other reasons for extension coached under paragraph 15 of his affidavit that, his children on 16.3.2024 was attacked by demons and thus he took him to a traditional healer in Tabora. All these caused him to delay to file application for revision within the time. The preposition of which was opposed by the respondent.

Evaluating the arguments made by both parties, the main point for consideration and determination is whether there are sufficient reasons given by the applicant to warrant the prayer sought. To commence with,

it is clear as stated in the case of **Tanga Cement Company Limited Vs Masanga and Amos A. Mwalwanda**, Civil application NO.6 of 2001, for a person to apply for extension of time, has to disclose sufficient reasons, which was defined as follows;

" What amounts to sufficient cause had not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant. "

However, there are also other factors that are considered to determine whether the applicant has shown good and reasonable cause such as the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant. **see Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported).

With regard to the issue of sickness as raised by the applicant, it is clear that since sickness is a condition which is experienced by the person who is sick and that it is not a shared experience except for a sick person who is in a position to express her or his feelings (**see John David**

Kashekya Vs The Attorney General civil application No 1 of 2012 (unreported)). However, for sickness to be a sufficient cause, the same must be sufficiently proved. This was fittingly explained in the case of **Emanuel R. Maira vs The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported) that;

"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike. "

Again, in the case of **Beatus Laurian Ndihayе versus Mariam Kitoela**, Miscellaneous Civil Application No.6of 2021, the court held that;

" The applicant's only reason advanced is illness. I am well aware that as of late there are decisions which are to the effect that illness constitutes sufficient cause for extension of time. However, such illness must be sufficiently proved. Looking at the affidavit filed in support of the application, the applicant has attached to the affidavit a letter from the traditional healer indicating that he was admitted at his place where he was receiving treatment and was later discharged after he was well. That traditional healer further proved his professionalism by attaching a copy of his Certificate of

incorporation No. A.91041 issued on 29/01/2019. The reason advanced by the applicant suffices to be sufficient cause upon which this court can exercise its discretion"

In the present case, the alleged sickness was for applicant's child. (Amos Mathias) and thus the appellant attended his medication of healing to the traditional healer. There is no further proof as to which traditional healer was his child medicated. There is no ample evidence from that mentioned traditional healer to prove as to whether he really admitted the applicant's child as alleged and whether the applicant was the one who was taking care over him. Therefore, the absence of such proof makes the reasons advanced by the applicant to be unmerited and is contrary to the law demands.

However, there is another issue of accounting of each day of delay, the impugned order was delivered on 6th May 2015, this application was filed before this Court on 8/4/2024. The applicant had however alleged that after the delivery of impugned decision, he was informed that it was withdrawn because there was matter on same suit Land involving the parties which is Land Application No.52 of 2015 before the Tribunal, which its judgement was delivered on 23/6/2017, then appealed to High Court which pronounced its judgement on 02/11/2022. The applicant then turned for application of execution via Miscellaneous Application

No.26/2023 which its ruling was delivered on 17/11/2023 whereby the applicant became aware that the withdrawn of Land Application No. 61 of 2015 was erroneously withdrawn. Yet he did not take initiative but that he wrote a complaint to his advocate and later got assistance from Mutongore learned advocate. Therefore, he urges this Court that the application be granted to cure irregularities in the proceedings of the tribunal and orders issued in respect of Land Application No. 61 of 2015.

Now, leave apart from sickness of the applicant's child who is allegedly recovered on 28.3.2024. If this assertion is true, the issue for consideration is, why the applicant awaited to file his application for extension of time until on 08/4/2024. Even if it could be true though not evidenced that the applicant's child recovered on 28.3.2024, but the application itself was filed on 8/4/2024, there are 12 days not accounted for as to why the applicant failed to file shortly after the alleged recovery of his sick child.

That is merely an apathy, which is not one of the legal grounds warranting extension of time. In my firm view, the applicant had failed to account for each day of delay from 28/3/2024 to 08/4/2024. There are many days remained unexplained. Being the case, the applicant was required to account for each day of delay and give sufficient reason for that delay. There is a litany of cases to that effect that delay even of a

single day, if unaccounted cannot warrant extension of time. In the case of **Attorney General v. Mkongo Building and Civil Works and Another**, Civil application No, 266/16 of 2019, the Court of Appeal formulated guidelines that may be considered in application for extension of time like the one at my hand. Criteria to be considered in application for extension of time as formulated by the Court of Appeal in **Mkongo Building case**, supra, are that:

"(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 case that he intends to take; And (d) if the court feels that there are sufficient reasons, such as the existence of a point of law sufficient such as the illegality of the decision sought to be challenged.

The complaint that, Land application No.61 of 2015 was withdrawn without being consulted, holds no water since it is undisputed that the one prayed to withdraw the matter before the tribunal was his advocate entrusted with all powers on his behalf. There is no rule which requires that any act by the advocate before the Court must be done with proof of permission by his client. Ascending with the applicant's opinion is to allow unnecessary wrangles before the court of law which I will not do. Being

engaged as an advocate he holds full mandate over the matter so engaged. By the way, even his own assertion that he instructed Mr. Lema to file the said case can as well be challenged that he did give that instruction. So long as he admits that he was his advocate, suggests that he had all the instructions to proceed with the matter as per law and all that transpired in court was not but with full consent of the applicant.

After all, reading paras 3,5 and 10 of the applicant's affidavit are self-conflicting and contradicting. The said Land Application No. 61 of 2015 was not withdrawn on 29th February 2016 as alleged but on 6th May 2015 (see the first document in annexure MNK4). Assuming that it was on 29th February 2016, under paragraph 5 of the applicant's affidavit suggests that he sooner became aware of that withdraw and dully detailed on the course undertaken. If that assertion is true, he ought to have challenged the sooner he had become aware of, if really he was displeased. Thus, it is conflicting that he became aware of the said withdraw on 17th November 2023 as alleged. Therefore, taking that course now, is like a legal betty in which this court is not its master of condoning. Any choice has consequences; the applicant has chosen his best.

On the complaint that the Land Application No.61/2015 was withdrawn in the absence of the parties to that land application, the same is misplaced on account that, the proceedings before the tribunal reveals

that both sides were present either in person or through representation,
similarly this holds goes on the complaint of dates.

With all the said, this application is unmerited and thus is dismissed
with costs.

DATED at SHINYANGA this 31st day of May 2024.



A handwritten signature in blue ink, appearing to read "F.H. Mahimbali", is written over a horizontal line.

F.H. Mahimbali
Judge.