

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 624 OF 2023

(Arising from the dismissal order of the High Court of Tanzania at Dar es Salaam District Registry in Miscellaneous Civil Application No. 466 of 2022 dated 23rd March, 2023 by Hon. Mr. Justice Bwegoge, J.)

AHMED ABDALLAH SALEH.....APPLICANT

VERSUS

EUTROPIA JOSEPH TARIMO (Suing as administrator of the late Andrew Joseph Tarimo).....1ST RESPONDENT

SHABAN SELEMAN JUMA.....2ND RESPONDENT

ALLIANCE INSURANCE CORPORATION LTD.....3RD RESPONDENT

R U L I N G

13th & 21st June, 2024

DYANSOBERA, J.:

This ruling is on an application for extension of time to apply for setting aside the dismissal order in Miscellaneous Civil Application No. 466 of 2022 delivered on 23rd day of March, 2023. It is on record that the application has been supported by the applicant's own affirmed affidavit together with other supporting affidavits of Thomas Joseph Massawe, learned Advocate and Henry Joseph Mboya, a Legal Officer. The application has, however, been resisted by the 1st and 2nd respondents by way of counter affidavits.

The timeline of events leading to this application can be briefly stated. Andrew Joseph Tarimo, the deceased was, on 6th day of August, 2021

knocked to death while riding a motor cycle. The driver responsible for the fatal accident was Shaban Selemani Juma (2nd respondent) who was driving a motor vehicle with Reg. No. T. 726 AXU Mitsubishi Canter, the property of Ahmed Abdallah Saleh, the applicant. The deceased sustained injuries which ultimately claimed his death. The 2nd respondent was then criminally charged before Kinondoni Resident Magistrate's Court in Criminal Case No. 1110 of 2012 and convicted on his own plea.

Following the termination of traffic proceedings against the 2nd respondent, the 1st respondent, then plaintiff, one Eutropia Joseph Tarimo (suing as administratrix of the deceased's estate), instituted Civil Case No. 125 of 2015 before this court against Shaban Selemani Juma, Ahmed Abdallah Saleh and Alliance Insurance Corporation Limited, the then 1st, 2nd and 3rd defendants, in that order but currently featuring as the 2nd respondent, applicant and 3rd respondent, respectively. The current 3rd respondent was sued in the capacity as insurer of the motor vehicle that was involved in the accident. In that case, the 1st respondent was claiming special and general damages, dependants' anticipated income, costs of the suit and other reliefs. The 1st respondent carried the day. It is on record that the suit the subject of this application proceeded *ex parte* against the applicant, the 2nd and 3rd respondents.

It is the applicant's complaint as revealed in the contents of the supporting affidavits and the submission of the applicant's learned counsel that the applicant was neither served to attend the court before the suit proceeded *ex parte* nor was he notified of the date of judgment. It is averred and contended that he came to know the existence of that Civil Case No. 125 of 2015 on 29th day of October, 2021 after being served with a notice to appear on execution proceedings No. 60 of 2021 originating from the said *ex parte* judgment and decree.

It is further averred and contended that after discovering that he was out of time, the applicant acted expeditiously and in good faith to challenge the *ex parte* judgment whereby on 18th November, 2021 he successfully applied for extension of time to set aside the *ex parte* judgment and decree before Hon. Mango, J. following of which, the applicant applied vide Miscellaneous Civil Application No. 466 of 2022 to have the *ex parte* judgment and decree set aside. Fortune was, however, not on his side as on 23rd March, 2023, the said application was dismissed for want of prosecution and his attempts to obtain the order of dismissal was thwarted by the JSDS system failure. The other grounds are falling sick of the applicant's learned counsel and the absence of the Hon. Judge from the duty station for some time.

Citing the case of **Tanzania Revenue Authority v. Tango Transport Company Limited**, Consolidated Civil Application Nos.4 of 2009 and 9 of 2008, counsel for the applicant re-iterated the principles of granting extension of time and explained that the applicant has met and complied with them. It is, therefore, prayed for the applicant that the delay was not attributed to his negligence and was with sufficient causes.

In reply, counsel for the 1st respondent argued that the applicant's journey was not sufficient cause for extension of time. In support of the argument, reliance was placed on the case of **Yassin Kinondo Mdee (as attorney of Tulibako Tabu Kyoma) Vs. Ngulo Mtiga (as the legal personal representative of Abubakar Said Mtiga)**, Miscellaneous Land Application No. 136 of 2023 at pages 7 and 8. On the argument that there was delay of being supplied with the dismissal order to the applicant, counsel for the 1st respondent submitted that there was no necessity for attachment of that dismissal order to the application. Counsel for the 1st respondent disputes the other reasons advanced by the applicant to be sufficient causes to warrant this court grant him extension of time. The same applied to the 3rd respondent in the submission whereby it was contended on his part that the applicant had failed to meet the criteria set by the higher court when one wishes the court to exercise its discretion to grant an extension of time.

It was in the submission for the 3rd respondent's advocate that the applicant has failed to show sufficient cause for this court to grant extension of time.

In his rejoinder, counsel for the applicant refuted what was submitted for the 1st and 3rd respondents and re-iterated his submission in chief.

Apparently, the 2nd respondent was not heard in respect of this application as he defaulted appearance despite the court's efforts to get him served and file a counter affidavit and written submissions. This application, therefore, proceeded ex parte against him.

I have given deserving consideration to the applicants' averments in the three supporting affidavits and the counter affidavit of the 1st and 3rd respondent. I have also considered the written submissions of parties' advocates. I have equally, taken into account the overall circumstances of the case.

This application for extension of time within which to apply for setting aside the ex parte judgment has been preferred under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E.2019]. Indisputably, a grant of extension of time under the said section 14 (1) depends on reasonable or sufficient cause being shown. The section provides as hereunder:

“14.

(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

(2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application.

The issue for determination is whether the applicant has demonstrated reasonable and sufficient cause warranting this court to exercise its discretion in his favour and grant the extension of time. The Court of Appeal had occasion to elaborate on what constitutes sufficient cause in the case of **Regional Manager, TANROADS v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported) where it observed:

‘What constitutes “sufficient reason” cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules’

It has been sufficiently demonstrated by counsel for the applicant and in all the three supporting affidavits that after the exparte judgment in Civil Case No. 125 was delivered on 5th February, 2019 and after finding himself barred by limitation, the applicant successfully applied before this court for

extension of time to set aside the ex parte judgment in Miscellaneous Civil Application No. 592 of 2021 delivered on 10th August, 2021. However, his application for setting aside the ex parte judgment made vide Miscellaneous Civil Application No. 466 of 2022 was dismissed on 23rd March, 2022 for want of prosecution. The applicant could not then apply for setting aside the dismissal order due to the main reasons as revealed in the counsel's written submission and the averments in the three supporting affidavits. The reasons are one, that a copy of dismissal order was not availed to him in time despite his several written requests to be supplied with the same as evidenced by several letters dated 27th March, 2023, 14th April, 2023, 2nd October, 2023 and 20th October, 2023 all written by the applicant's learned Counsel, Mr. Thomas J. Massawe. Two, the falling sick of the applicant's learned counsel Mr. Thomas J. Massawe, a fact proved by the medical note dated 23rd March, 2023. Three, absence of the Hon. Judge from his station from 9th to 13th October, 2023 as evidenced by the Deputy Registrar's Notice to the Public titled 'TAARIFA KWA UMMA and four, the problem of accessing documents in the JSDS eCase registration system.

For the stated reasons, it is my finding that the applicant has sufficiently shown reasonable causes to warrant this court extend the time

as he has not only explained away the delay in applying for setting aside the dismissal order but also, he has accounted for the whole period of the delay.

The application is, accordingly, granted with no order as to costs. Time is extended and the applicant should file his application for setting aside the dismissal order within fourteen days of the date of this ruling.

Order accordingly.



A handwritten signature in black ink, appearing to be "W.P. Dyansobera".

W. P. Dyansobera

JUDGE

21.6.2024

This ruling is delivered under my hand and the seal of this Court on this 21st day of June, 2024 in the presence of Ms. Thabitha Maina, learned Counsel for the 3rd respondent and holding brief for Mr. Thomas Massawe, learned Advocate for the applicant and in the presence of Mr. Livin Raphael, learned Counsel for the 1st respondent. The 2nd respondent is absent without notice despite his being served.



A handwritten signature in black ink, appearing to be "W.P. Dyansobera".

W.P. Dyansobera

JUDGE

21.6.2024