

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOROGORO DISTRICT REGISTRY**

**AT MOROGORO**

**MISCELLANEOUS CIVIL APPLICATION NO. 58 OF 2023**

**THE ATTORNEY GENERAL .....1<sup>ST</sup> APPLICANT**

**THE BOARD OF TRUSTEES OF  
NATIONAL SOCIAL SECURITY FUND .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**OBADIA MJARIFU T/A  
KELLU SECONDARY SCHOOL .....RESPONDENT**

**RULING**

23/01/2024

**KINYAKA, J.:**

The Applicants preferred the present application under section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019. Deduced from the chamber summons and affidavit of Ms. Emma Issa Ambonisye, learned State Attorney, the Applicants sought an order for extension of time to lodge an application to set aside *ex parte* hearing order of the Court made on 30/12/2022 in Civil Case No. 30 of 2022.

On 23/01/2024 when the application was called for hearing at 9:00 am, the Applicants were duly represented by Ms. Emma Ambonisye and Ms. Elifrida

Mutashobya, learned State Attorneys, and the Respondent was duly represented by Mr. Deus Nyabiri, learned Advocate.

When the parties were called to address the Court, Mr. Nyabiri prayed to withdraw the notice of preliminary objection lodged on 24/10/2023, the prayer which was not objected to by Ms. Ambonisye. Upon the withdrawal of the notice of preliminary objection, I invited Ms. Ambonisye to take the floor to address the Court on the Applicants' application before the Court.

Ms. Ambonisye began by adopting the contents of the affidavit of the Applicants sworn by Ms. Emma Issa Ambonisye, learned State Attorney as forming part of the Applicants' submissions. She prayed for the Court's indulgence to extend time for the Applicants to lodge an application to set aside *ex parte* hearing order of the Court dated 30/12/2024.

In response, Mr. Nyabiri was fair enough to inform the Court that the Respondent concedes to the Application pursuant to section 3A (1) of the Civil Procedure Code, Cap. 33 R.E. 2019 (hereinafter, the "CPC"), that encourage parties and the Court to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. He prayed to the Court not to order costs.



Despite a concession to the grant of the present application by the Respondent, I am enjoined to determine whether the Applicants demonstrated good or sufficient cause to warrant the Court to grant the orders sought.

I have read the affidavit of the Applicants sworn by Ms. Emma Issa Ambonisye, learned State Attorney, in support of the application and found that the reasons for delay to lodge an application to set aside *ex parte* hearing order was occasioned by the striking out of the Applicants' several applications in numerous occasions due to incompetence and errors. These include; Misc. Application No. 15 of 2023 for setting aside *ex parte* hearing order, Misc. Civil Application No. 15 of 2023 for extension of time which was wrongly filed and received with the same number as the previous application which was struck out, and Misc. Civil Application No. 38 of 2023 for extension of time which was again, struck out for being incompetent.

I find the delay by the Applicants to lodge application to set aside *ex parte* hearing order was occasioned by technical delays within the meaning of the decision of the Court of Appeal in the cases of **Fortunatus Masha v. William Shija and Another [1997] TLR 154** and **Eliakim Swai and Another v. Thobias Karawa Shoo**, Civil Application No. 2 of 2016 [2017]

TZCA 162 (22 February 2017; TANZLII). In **Eliakim Swai and Another** (supra), on page 11 through to 12, the Court of Appeal observed:-

***"...a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any, really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal....."*** [Emphasis added]

I find that the Applicants have demonstrated good and sufficient cause for delay to file an application to set aside *ex parte* hearing order. Further, in view of the Respondent's concession of the application, I find merit in the application.

Before I make a final order, I commend the maturity exhibited by the Counsel for Respondent, Mr. Deus Nyabiri by not contesting to the present application based on the principle of overriding objective articulated under section 3A



(1) of the CPC. The same has greatly assisted the Parties and the Court to save their precious time and resources.

In the upshot, I find the present application meritorious and proceed to grant the same. The Applicants are given 14 days from today to lodge their application to set aside *ex parte* hearing order of the Court dated 30/12/2022. I make no order as to costs.

It is so ordered.

**DATED** at **MOROGORO** this 23<sup>rd</sup> day of January 2024.



*H. A. Kinyaka*  
**H. A. KINYAKA**  
**JUDGE**  
**23/01/2024**