

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB- REGISTRY
AT SHINYANGA**

MISC. CIVIL APPLICATION NO. 35 OF 2023

*(Arising from civil Appeal No 19 of 2023 at Shinyanga District court before
Hon Langau dated on 22/6/2023 originated from Civil Case No. 1 of 2023 at
Nindo Primary court dated on 8/2/2023)*

ANDREA MAYUNGA. APPLICANT

VERSUS

NJILE NKELENGIWARESPONDENT

RULING

27th February & 8th March, 2024

MASSAM, J.:

The applicant Andrea Mayunga made the present application for extension of time to file revision to the High court against the judgment of the district court of Shinyanga dated on 22/6/2023. This application has been preferred by a chamber summons under Section 14 (1) of the law of limitation Act Cap 89 R.E 2019. The applicant application is supported by an affidavit of Andrea Mayunga and the same was opposed by Njile Nkelejiwa, the respondent.

The application was urged orally where by both parties appeared in persons. In his brief submissions, the applicant submitted that he prayed this application for extension of time to file revision as he was not aware of this case until when he was called at Nindo Primary court and informed about the said decree which was for execution. He added that after that he went to Shinyanga District court and been told that there was a case filed and its decree is about to be executed at Nindo primary court.

Responding to the submission from the applicant, the respondent denied the application by starting that the applicant was aware of that case but he decided not to appear, as he was summoned three times through their hamlet chairman and fail to appear ,that's why the matter was heard ex-parte.

In his rejoinder the applicant insisted that he informed the Primary court that he was not aware that's why he was advised to file this application for extension of time.

I have read the submissions from both parties, I find the central issue for consideration and determination is **whether sufficient reasons has been advanced to warrant the extension of time.**

It is common law that an order for extension of time may be granted by the court in exercise its discretionary powers. This discretion power is judicial in nature and must confine to the rules of reasons and justice. I pray to follow the reasoning in the case of **Lyamuya Construction Co Ltd vs Board of Registered of Young women's Christian Association of Tanzania**, civil application No 2 of 2010(2011) TZCA where the court held that.

"as a matter of general principle it is in the discretion of the court to grant extension of the time but that discretion is judicial and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily"

Again in the case of **Yusuph Same and Another vs Khadija Yusuph**, civil appeal no 1 of 2002 CAT at Dar es salaam the court stated that

"it is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amount to sufficient cause has not been defined, from the 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 the delay, lack of diligence on the party of the applicant does not amount to sufficient cause"

The court went further to provide the guidelines that may be followed in the course of determination of an application for extension of time these as follows

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be on ordinate*
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take*

(d) If the court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

Moreover the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each case under consideration and the ground might not be similar as there was no precise definition of what amounts to reasonable cause, this was elaborated in the case of **Felex Tumbo Kisima vs Ireland Another** (1997)TLR Where the court observed that

*“It should be observed that ” **sufficient cause**” should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons or cause which are outside the applicant’s power to control or influence ,resulting in delay in taking any necessary steps;*

From the application before this court, the main reasons for the prayer for extension of time to file for revision are found at paragraph 5 of the applicant’s affidavit that, the district court heard and determine the

matter without summoning him who is affected in that decision as he was not given the right to be heard. He submitted that he was not aware of the filed case, as he was not served with summons by the respondent, he came to know it after he had been summoned to appear to Nindo Primary court for execution. He added that after being informed on the said case, he went to the district Court to confirm about it.

This court peruses the proceedings of the District court in order to see the applicant allegation if are true or not, this court on perusal find out that on 10/5/2023 the appellant informed the court that he served the respondent but he refused to sign it as there was no refused to sign it evidence to support his allegation that the applicant was served but on the other hand the trial court proceeding are silent as to whether the applicant was called to testify hence the matter was heard exparte in absence of proof of service to the applicant .

Hence from the above observation, this court is of the view that the applicant took trouble by making follow-up of the case at the District Court with intention to prosecute his case.

For the foregoing reasons I hold that the applicant has advanced sufficient reasons for delay to warrant this court to exercise its discretion to grant the enlargement sought. Therefore the application is hereby granted. The applicant is given seven(7) days from the date of this ruling to file his application for revision. From the circumstances of this case no order of the costs is given.

It is so ordered.

DATED at SHINYANGA this 8th day of March, 2024.



A handwritten signature in blue ink, appearing to read "R.B. Massam", is written over the printed name.

R.B.Massam
JUDGE
8/3/2023.