

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

Misc. Commercial Appl. No. 47 of 2021
(Arising from Commercial Case No.15 of 2021)

YUSUFU HAMIS KITUMBO.....APPLICANT

VERSUS

MAENDELEO BANK PLC.....RESPONDENT

Date of Last Order: 27/07/2022
Date of Ruling: 24/08/2022

RULING

NANGELA, J.:

This is an application for extension of time. The Applicant brought it under section 14 (1) of the Law of Limitation Act, Cap.89 R.E 2019 and any other enabling provisions of the law. In the Applicant's chamber summons was supported by an affidavit of one Fatuma Kazimoto and the Applicant seeks for the following orders:

1. That, this Court be pleased to extend time to the Applicant herein to file an Application to set aside the Summary Judgment by Dr. D.J. Nangela, J., issued

in respect of Commercial Case No.15 of 2021.

2. Costs of this application be provided for.
3. Any other reliefs this Court may deem fit and /or just to grant to the Applicant.

On the 2nd of May 2022, the Respondent filed a counter affidavit to contest the application. There was no reply to the counter affidavit. When the parties appeared before me on the 27th July 2022, the Applicant enjoyed the services of Mr Augustino Kusalika, learned advocate while Mr Kennedy Mgongolwa, learned advocate as well, appeared for the Respondent. The matter was heard by way of oral submissions from the counsels for the parties.

In his oral submission, Mr Kusalika submitted that, the gist of this application is a request by the Applicant for an extended time within which he could lodge an application to the Court to set aside its summary judgment issued in respect of the **Commercial Case No.15 of 2021**. He contended that, the reasons for the applicant's delay are disclosed in paragraphs 3 to 9 of the supporting affidavit by Ms Fatuma Kazimoto, the previous counsel for the Applicant, filed in this Court.

He contended that, the reasons why Ms Fatuma was unable to file the application on time are that, Ms Fatuma was indisposed and in Morogoro as shown in Annexure A-2 to the affidavit. He submitted that, Ms Fatuma was admitted from the 12th of March 2022 and the application was prepared on April 2022.

He contended that, since the counsel for the Applicant was sick for almost 18 days as demonstrated by Annexure A-2, a delay to act was thus occasioned, which delay in filing this application, was neither inordinate nor resulting from negligence on the part of the Advocate. He urged this Court, thus, to grant the application.

For his part, Mr Kenndy Mgongolwa opposed the granting of the prayers sought in this application. He contended that, no sufficient reasons were adduced by the Applicant. Adopting the contents of the counter affidavit filed in this Court, he contended that, from the 8th of December 2021 to the date when the application was filed, the Applicant has not been able to account for the delay. Commenting on the medical chit annexed to the Applicant's affidavit, it was Mr Mgongolwa's submission that, the same shows that Ms Fatuma, the previous advocate for the Applicant, was discharged on the 7th December 2021.

To further support his submissions, Mr Mgongolwa relied on the decision of the Court of Appeal of Tanzania in the case of **Airtel Tanzania Limited vs. Misterlight Electrical Installation Co. Ltd & Another**, Civil Appl. No. 37/01 of 2020 (unreported), stressing that, even a delay for a single day must be accounted for. He further submitted that, the sickness which the Applicant talks about is that of her advocate and not of the Applicant and, that, the Applicant has not stated as to why he failed to file the application in time. He further placed reliance on the case of **LIM Han Yang and Another vs. Lucy Treseas**

Kristensen, Civil Appeal No.219 of 2019. He contended that, the Applicant ought to have made up follow up of his case. In view of his submissions, he urged this Court to dismiss the application with costs.

In a brief rejoinder, Mr Kusalika reiterated his submission in chief and distinguished the authorities relied upon by the Respondent. He contended that, the facts of this case are different since there is an issue of sickness of the learned counsel assigned to represent the applicant. He contended that, as per Annexure A-2, the delay is not of 85 days as alleged and the Applicant has never been negligent. On those grounds, he urged this Court to grant the prayers sought in the chamber summons.

I have taken time to carefully consider the rival arguments by the learned counsel for the parties. The question I am supposed to address is whether the applicant has disclosed sufficient reasons for the delay in lodging the application for which an extension of time is sought. The principle stands to be that, there must be sufficient reasons or cause if an application of the like nature is to be granted.

Besides, any delay even for a day must be accounted for and there is a plethora of cases which have cemented the requirement of accounting for every day of delay. Examples include the cases of **Bushiri Hassan vs. Latifa Lukio, Mashayo**, Civil Application No. 3 of 2007 (unreported), **Karibu Textile Mills vs. Commissioner General (TRA)**, Civil

Application No. 192/20 of 2016 (unreported), and **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

In determining issues regarding extension of time, however, Nsekela JA (as he then was), stated, in the case of **Tanga Cement Company Limited vs. Jumanne D. Massanga and Amos A. Mwalwanda, Civil Application No. 6 of 2001**, (unreported), that:

“from decided cases a number of factors have to be taken into accounting 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.”

In the case of **Mwananchi Insurance Company Ltd vs. The Commissioner of Insurance**, Misc. Commercial Application No. 264 of 2016 (unreported), this Court dismissed the Applicant's application because there was no proof to satisfy the Court that the Applicant's counsel was indeed sick. This means that, where proof is provided, the Court may take a consideration to grant the prayers sought. In this current application, however, proof of sickness in the form of Annexure A-2 to the affidavit was provided.

I have taken the liberty of examining Annexure A-2 to the Applicant's affidavit and I am of the view that, the learned advocate assigned to represent the Applicant could not have made

it owing to the kind of medical complications she went through. As such, the ground of sickness advanced as a cause for the delay is sound and valid.

In the upshot, this Court settles for the following orders:

1. That, this application is hereby granted with costs.
2. The Applicant to file his application within 14 days from the date of this ruling.

It is so ordered.

DATED at DAR ES SALAAM ON THIS 24TH DAY OF
AUGUST, 2022



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DEO JOHN NANGELA
JUDGE