

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION NO. 2 OF 2013

BUHOLO NSIMBILAAPPLICANT

VERSUS

KIJA MAGINA.....RESPONDENT

RULING

13th Feb & 14th April, 2014

S.M.RUMANYIKA, J

The application for extension of time within which to appeal against the 20/06/2012 judgment, and probably a decree of the district land and housing tribunal, is brought under section 14(1) and (2) of the Law of Limitation Act cap. 89 AND Order VI rule 17, sections 93 and 95 of the civil procedure code. Cap. 33 R.E 2002.

The applicant and respondent are represented by Messrs Sichilima and Kayaga learned advocates respectively.

Having sort of adopted all the contents of the affidavit of Buholo Nsimbila, in support of this application, Mr. Sichilima submitted that

the applicant applied on the very 20/6/2012 for, and she obtained the copies of the impugned judgment and decree within the first 27 days. Vide excheque receipt No. 39777878 of 17.7.2012. Being a poor widow and layperson, she wasn't aware of the limitation period. Nor was she able to pay for the legal services at the earliest opportunity. Submitted and wound up the learned counsel.

Mr. Kayaga submitted that, as long as the certified copies of impugned judgment and decree were timely supplied to the applicant, the application falls short of merits.

That granting or not granting by court, of extension of time was discretionary. But it needs to be exercised judicially. That the counsel had not told the court as to what really befell the applicant, so that one could not take the necessary steps timely. We doubt if on this one only, this court had any discretion to grant the application. Mr. Kayaga submitted with moderate zeal. While insisting that there can be no endless litigation in court.

In his rejoinder, Mr. Sichilima submitted like urging this court further, not to over look the type of common, and ealderly client, who was also ignorant of the procedural laws.

The issue is whether the applicant has assigned good and sufficient cause for the delay. The yard stick at law.

At the beginning, I thought that one was caught up waiting for copy of the impugned judgment and decree. If at all attachment in such 2nd appeal, of the documents was necessary. Infact it is not. But then, it went uncontroverted that the applicant had got the documents well within time.

In fact I was very much impressed by Mr. Kayaga like saying that whereas we cannot have endless litigation in courts of law, grant or non granting of extension of time for one to take the necessary steps is not, but discretional by the court. Provided that it is exercised judicially. I understand that there is a number of criteria to be considered. But the age, economic disadvantage and the geographical area a party hails from, cannot be one of them. Leave alone ignorance by the subject of the related procedural rules of the game. This one is no defence. Therefore, if alone the three criteria were an excuse, then only the youngstars, born town, but rich men would have been the masterly punctual litigants ever. Moreover, I just do not remember to have got Mr. Sichilima saying it clealer, that ignorance of law is no longer a no excuse.

In the result, I will hold and order that in the absence of good and sufficient cause, the possibility of the delay having been caused by negligent and or dilatory conducts of the applicant cannot be ruled out. The application is dismissed entirely with costs.

R/A explained.

S.M.RUMANYIKA

JUDGE

03/03/2014

Delivered under my hand and seal of the court in chambers this 14/4/2014. In the presence of Mr. Kayaga, also holding briefs of Mr. Sichilima.

S.M.RUMANYIKA

JUDGE

14/04/2014