

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

**AT TABORA**

MISCELLANEOUS LAND CASE APPLICATION NO. 61 OF 2013

AT KIGOMA

CHRISTINA LEONARD NYUMAYINZU .....APPLICANT  
(ADMINISTRIX OF ESTATE OF LEONARD NYUMAYINZU)

VERSUS

PETRINA ALOYCE .....RESPONDENT  
(ADMINISTRIX OF ESTATE OF ANASTAZIA EMMANUEL)

**RULING**

22<sup>nd</sup> May & 03<sup>rd</sup> June, 2014

**S.M.RUMANYIKA, J**

The application for extension of time within which to, one also applies for restoration of appeal No. 38 of 2010 dismissed by this court. It is brought under section 14 of the Law of Limitation Act Cap. 89 RE 2002, Order XXXIX Rule 19 and section 95 of the Civil Procedure Code Cap. 33 RE 2002 (the CPC) In fact it is a two in one application.

The application is supported by the affidavit of Method Raymond Gabriel Kabuguzi. Mr. Kayaga learned counsel represents the Applicant. The Respondent appears in person.

Mr. Kayaga having adopted all the contents of the supporting affidavit, he submits that as the appeal had been adjourned several times and repeatedly for non availability of the presiding judge. The Applicant's advocate travelled, and had to remain in Kagera region attending to his father in bed then, who eventually died. Leave alone the Applicant who could, him being a full time occupied employee of Kasulu District Council, not be able to attend in court any date matter was called on.

That matter was dismissed prematurely on the material date. Much as it had been called up only for mention.

To wind up, Mr. Kayaga contends that given nature of the dispute, it would have been reliably determined not otherwise, but only on merits of it.

The Respondent submitted that any seasoned lawyer like Mr. Kabuguzi, should have not abandoned the matter so casually. And if anything, one ought to have asked, for a **sine die** adjournment pending his arrival from Kagera region. Insisted the Respondent.

Indeed the appeal was dismissed for want of prosecution just on the "mention date". As such, I know no any substantive or procedural

laws that provide for "mention". But the best court practice does. Now, the issue whether or not the dismissal order was justified, will not take much of my time. Much as this one is no application for review. Whereby I could see into any possibility to revisit the impugned order.

As said, this one is a two in one application. Whereas one asks for extension of time to apply, he applies also, for restoration of the matter dismissed for want of prosecution. Like one having broken into the court room and his application is admitted as No. 61/2013, yet still he knocks at the door. This can not be a proper practice. However, I will, in the light of circumstances of it accommodate the two – fold applications.

It is on that basis that Mr. Kayaga argues sufficiently and convincing in my view, that Mr. Kabuguzi could not, due to such reasons beyond control of one self enter appearance on 02.08.2013. Hence the appeal got dismissed.

Now, is there any good and sufficient ground for the delay advanced? Though one, it is far fetched. That the moment the advocate became aware on 22/10/2013, of the said dismissal order, it was too late for him to lodge the application. Without extension of time being sought and granted. I have considered the fact that this application was filed on 31.10.2013 ie. about two (2) months later. I find it a reasonable lapse of time.

And so was good and sufficient ground of the delay. The application is granted. Land Appeal No. 38 of 2010 restored. Having also considered the circumstances leading to the said dismissal, I will order that each party to bear their own costs.

R/A explained.

**S.M.RUMANYIKA**

**JUDGE**

**28/05/2014**

Delivered under my hand and seal of the court in chambers. This 03/06/2014. In the presence of Ms Stela Thomas Advocate and the Respondent.

**S.M.RUMANYIKA**

**JUDGE**

**03/06/2014**