

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA.

MISC. LAND APPLICATION NO. 30 OF 2012

(Arising from Land Appeal No. 40 of 2009 in the DLHT Kigoma)

MZEBERO MAPEPE..... APPLICANT

VERSUS

FANYEJE ANDREA

(As Administrator of the Estate

of the Late ANDREA BIKENYE)

}.....RESPONDENT

RULING

5th & 12th March, 2015

RUMANYIKA, J.

The application is brought under S.38 (1) of the Land Disputes Courts Act Cap 216 RE 2002, and S.14 (1) of the Law of Limitation Act Cap 89 RE 2002. For extension of time within which Nzebero Mapepe (herein the Applicant), to appeal against 11/03/2010 decision of the District Land and Housing Tribunal – Kigoma (the DLHT).

It is supported by affidavit of Kamaliza Kamoga Kayaga, whose contents essentially, Mr. Kayaga learned counsel for the present applicant adopted at the hearing. The Respondent appears in person.

Mr. Kayaga submits in a nutshell like saying that he should not have been time barred, but for having it been dismissed by this court on 11.07.2012, inadvertently though for want of prosecution. Much as matter (mistakenly for ext. of time,) had been dragging waiting for appointment of administrator of the estate of the deceased Andrea Bikenye (the Respondent then): That he was in this very court's corridors, but appearing before another judge in some other matters all together.

The Respondent submitted that not only the application was superfluous, but also by itself, it was time barred. Appellants' Delaying tactics by all standards. I pray that the application be dismissed with costs. Submitted unusually briefly by the Respondent.

The bottom line of extension of time is always good cause and sufficient grounds.

The point is whether dismissal of a case earlier on instituted subsequent to misdirection is a good cause.

Here, the issue is one; whether time wasted by a party, and therefore delay caused while pursuing a matter inadvertently instituted by him whether or not was duly served is good ground and or sufficient the answer is no! After all the fact that was misled, and as a result the present Applicant lodged application for extension of time instead of appeal wasn't substantiated by the ill advisor if any. It being a serious and indeed good fact, the Applicant should have been supported by affidavit of the said "poor" legal advisor. Other than the learned counsel's plain statements.

Mr. Kayaga might have not been duly notified for the "improperly before the court application" according to him it was called out but dismissed for non prosecution. This fact with greatest respect holds no water. As it is not this court's decision that is sought in the end to be challenged by the present Application too, this one is no good/sufficient cause for extension of time.

I think the categories of grounds of extension of time are never closed. Preparedness/readiness of aggrieved a party to lodge application for extension of time is utmost importance. I know no law which sets time limit. But I think application for extension of time is by all means and as a general rule is not time barred. But looking at nature of dispute no reasonable tribunal under the sun can expect and infact allow it to be open ended period short of which it may have resulted into endless litigation. At least a lapse of maximum two months of the impugned decision may in opinion sufficiently serve the purposes. This application was according to the records lodged on 19.07.2012. About 2.4/12 years later. As argued correctly so the Respondent (apparently a layman) this application was not only filed as afterthought, but also as good delaying tactics by the Judgment debtor/Applicant herein.

All said, I will dismiss the application as hereby do with costs.

Right of appeal explained.

S.M. RUMANYIKA

JUDGE

05/03/2015

Delivered under my hand and seal of the court in chambers this
12/03/2015. In the presence of Ms Stella Advocate and the Respondent.

S.M. RUMANYIKA

JUDGE

05/03/2015