

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPL. NO.107 OF 2017

**LUCIA DAUD NGAYAMBA.....APPLICANT
Versus**

**FRED BEDA CHULU (Administrator of the
Estate of Beda Leo Chulu).....1ST RESPONDENT**

MOHAMED SALUM NAHDI.....2ND RESPONDENT

Date of Last Order: 25.4.2018

Date of Ruling: 31.5.2018

R U L I N G

S.A.N. WAMBURA, J:

The applicant **Lucia Daud Ngayamba** made this application under Section 14 (1) of the Law of Limitation Act Cap. 89 R.E 2002 for orders that:

- a) That this Court be pleased to order extension of time for filing review.*
- b) Any other order (s) this Honourable Court may deem fit and just to grant.*

The application is supported by the affidavit sworn by **Lucia Daud Ngayamba** the applicant.

Respondents **Fred Beda Chulu (Administrator of the estate of Beda Leo Chulu)** and **Mohamed Salum Nahdi** filed a counter affidavit bitterly challenging the application.

At the hearing the applicant appeared in person unrepresented whereas the respondents were represented by Mr. Kaizer Msosa Advocate.

With leave of this court, the application was disposed of by way of written submissions. I thank both parties for adhering to the schedule.

In support of the application, the applicant prayed to this court to adopt the contents of the affidavit to form part of her submission.

She contended that the reason for the delay to file application for review within time was due to the death of her late husband who passed away on 27/08/2015. That she was making funeral arrangement of her husband and after the funeral she wrote an

application letters to apply for the copies of the judgment and decree.

She averred that the said copies was availed to her on 25/05/2016. She therefore prayed to this court to grant the application as prayed so as to protect her rights. She referred this court to Article 13(6) of the Constitution of the United Republic of Tanzania.

In response, Mr. Msosa submitted that there was no proof that the applicant applied for the copies of the judgment. He averred that from the date of deliverance of the judgment up to the date of the death of her late husband , the applicant failed even to file a letter to request copies of the said Judgment to show that she had taken a step toward her intended review.

Mr. Msosa argued that at the time funeral arrangement took place, the time to file review was already passed hence funeral arrangements could not be a reason for her delay. He vehemently stated that the applicant failed to disclose effort she

took to obtain copies of Judgment within thirty days since deliverance of the Judgment.

He referred this court to the case of **The Registered Trustees of the Archdiocese of Dar es Salaam VS The Chairman Bunju Village Government and 11 Others** Civil Appeal No. 147/2006(unreported) where the Court of Appeal held that the court can grant extension of time only when there is no negligence, or inaction or want of bonafides on part of the applicant. He therefore prayed for the application to be dismissed with costs.

In reply, the applicant reiterated her earlier submission in chief.

Before dealing with the substance of this application in light of the rival submissions, I find it pertinent to restate that although the Court's power for enlarging time under Section 14 (1) of the Law of Limitation Act Cap. 89 R.E. 2002 is both broad and discretionary, it can only be exercised if good cause is shown.

The term sufficient cause has not been defined, so the as to guide the exercise of the Court's discretion in this regard, the Court must consider the merits or otherwise of the excuse disclosed by the applicant for failing to meet the limitation period prescribed for taking the required step or action.

Apart from valid explanation for the delay, good cause would also depend on whether the application for extension of time has been brought promptly and whether there was diligence on the part of the applicant.

The question now is whether the applicant has shown good cause for this court to exercise its discretionary powers to grant the application.

According to the facts stated in the affidavit, the applicant did not state anywhere as to when exactly did she apply for the copies of the judgment and decree. To make it worse enough she did not attach any letter to prove that she requested for the copies of judgment and decree within thirty days from the date of the deliverance of the Judgment.

The main reason adduced by the applicant for the delay is that she was making funeral arrangements of her late husband who died on 27/08/2015. However the court record shows that the judgment was delivered on 24th July 2015.

It is my belief that from the date of deliverance of the said judgment up to the date of the death of her late husband, the applicant could have requested for the copies of the judgment and decree so as to show due diligence. Unfortunately this has not been done.

It is trite law that any applicant seeking extension of time is required to account for each day of the delay.

In the case of **Bushiri Hassan VS Latifa Lukio Mashayo**, Civil Application No. 3 of 2007(unreported) the Court of Appeal held that; I quote;

“Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.”

In my opinion I find no justifiable reason advanced by the applicant to constitute good cause to warrant this Court to exercise its discretion to extend the time within which to file an application for review out of time.

Having said so, the application is accordingly dismissed for want of merit.

I make no order as to costs.

S.A.N. WAMBURA

JUDGE
31.05.2018