

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

MISC. LAND CASE APPLICATION NO 314 OF 2016

(Originating from Land Appeal No. 112 of 2012)

EVANSON TEMU & 3 OTHERSAPPLICANTS

VERSUS

AGNES NYAGETERA.....RESPONDENT

Date of last order: 11/07/2018

Date of Ruling: 24/07/2018

RULING

Makuru, J.:

The Applicants were the Appellants in Land Appeal No. 112 of 2012. However, on 17/7/2015 the appeal was dismissed for want of prosecution. The Applicant has now moved this court under **section 14(1) of the Law of Limitation Act** for extension of time within which to file an application for re-admission of the said appeal. The application is supported by the affidavit of Jamhuri Johnson, Advocate for the Applicant.

Arguing in support of the application Mr. Jamhuri learned counsel submitted that, Land Appeal No. 112 of 2012 had been moving from one judge to another. This caused confusion on ascertaining the judge who was responsible for handling the case. It is submitted further that, the Applicants failed to trace the exact date of the case because of the confusion caused by the court orders.

Mr. Jamhuri went further to inform the court that, after a close follow up they gathered that the appeal was assigned to Hon. Khaday, J. for hearing under BRN Sessions. It was fixed for hearing on 17th July, 2015 without the

Applicants' knowledge and the same was dismissed for want of prosecution. According to him, when it was brought to their attention that the case has been dismissed time to file an application for re-admission of the appeal had already elapsed.

It is Mr. Jamhuri's contention that, he has managed to show sufficient cause as to why he failed to file the application for re-admission on time. In support of his contention, the learned counsel cited the following cases: **Caritas Kigoma Vs. Kg Dewsi Ltd** (2003) TLR 420, **Issack Sebegele Vs Tanzania Portland Cement Company Limited**, CAT Civil Application No. 25 of 2002 (Dar es Salaam Registry, unreported).

In reply thereto, the Respondent who was assisted *gratis* by Women Legal Aid Center (WLAC) submitted that, the Applicant has not demonstrated sufficient reasons as to why they did not file the application in time. She cited the cases of the **Registered Trustees of the Archdiocese of Dar es Salaam Vs. The Chairman Bunju Village Government and 11 Others**, CAT Civil Appeal No 147 of 2000 (Dar es Salaam Registry, unreported), **Regional Manager, Tanroads Kagera Vs. Ruaha Concrete Company Limited**, CAT Civil Application No. 96 of 2007 (Dar es Salaam Registry, unreported) and **Kalunga and Company Advocates Vs. National Bank of Commerce** (2006) TLR 235. In these cases it was basically stated that, what constitutes sufficient cause must be determined by reference to the circumstances of each particular case. That is the Applicant must place before the court material which will move the court to exercise its judicial discretion to extend time.

In the course of her submission the Respondent raised an objection that the application was brought under a wrong provision of the law. According to her the proper provision to seek extension of time is **Order XXXIX Rule 19 of the Civil Procedure Code, Cap 33 RE 2002** and not section 14 of the Law of Limitation Act, Cap 89 RE 2002. I will deliberate on this preliminary objection before embarking into the merits of the application.

It should be noted that, points of law should be raised at the earliest possible time along with the pleadings. I am of the view that raising this objection in the written submission is not proper procedure. This is an abuse of court process and the objection ought to be disregarded.

However, even if we assume that the alleged preliminary objection is proper before the court, yet, it still lack legs to stand. I say so because what is currently before me is not an application for restoration. The application before me is seeking for extension of time within which to file an application for restoration. I, therefore, find that the Applicant has moved the court properly because the proper provision for extension of time is section 14(1) (supra) and Order XXXIX Rule 19 is for restoration/re-admission.

Now embarking on the merits of the application, it is a well settled principle of law that, whether to grant or refuse an application for extension of time is purely on the discretion of court upon considering, among other factors, whether the Applicant has adduced sufficient reasons for the delay. This position was reiterated by the court of Appeal in the case of **Ngao**

Godwin Losero Vs. Julius Mwarabu, CAT Civil Application No. 10 of 2015, (Arusha Registry, unreported) whereby Mussa J.A. had this to say:

.....as a matter of general principle that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice.

The learned Justice of Appeal went further to cite the case of **Mbogo Vs. Shah** [1968] EA whereby the defunct Court of Appeal for Eastern Africa held thus:-

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."


In explaining what amounts to sufficient reason Nsekela J.A., in the case of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported), had this to say:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant."


The learned single Judge cited the case of **Dar es Salaam City Council Vs Jayantilal P. Rajani** (CAT) Civil Application No. 27 of 1987 (unreported).

In the instant case the reason adduced for the delay is that the matter had been assigned to different judges as per Annexure A and B, thus causing confusion on the part of the Applicants. As a result, the Applicants lost track of the case as the dates of hearing were uncertain. Hence, the Applicants were not aware of the dismissal order and they came to realize of the same after time to apply for restoration had already expired. I am of the view that there is sufficient reason to convince the court to grant the orders sought.

Having said all that, I grant the application with no order as to costs.


C. W. Makuru
JUDGE
24/07/2018

Court: Ruling delivered in court this 24th day of July, 2018 in the presence of the Respondent and in the absence of the Applicants.


C. W. Makuru
JUDGE
24/07/2018