

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

MISC. LAND APPLICATION NO. 676 OF 2020

*(Originating from Land Appeal No 141 Arising from the decision of the High Court
Land Division at Dar Es Salaam, vide Land Appeal No.176 of 2017,)*

WAZIRI MSIGIRI..... APPLICANT

VERSUS

KISAGE GINGE MARWA.....RESPONDENT

RULING

25th June & 2nd July, 2021

KARAYEMAHA, J.

This Court has been moved under section 93 of the Civil Procedure Code, (Cap 33 R.E. 2019) to grant orders prayed in the chamber summons namely:

- i) That the honourable court be pleased to grant enlargement of time for the applicant to file an application for re-admission of the land appeal no.141 of 2015 which was dismissed on 5th September, 2017 by Hon. Mzuna J for want of prosecution. The costs of this Application be paid.
- ii) The Honourable Court be pleased to issue any other order or relief as the same shall deem fit.
- iii) Costs of this application

The application is brought by way of a chamber summons supported with an affidavit sworn by Anindumi Jonas Semu duly instructed by the applicant which together with other records gives the background of this

matter. As discerned from the record, the applicant was an appellant in Land Appeal No 141 of 2015. On the reason of failure to prosecute the same, the appeal was dismissed on 5/9/2017. On 7/11/2017 the applicant filed Misc. Land Case Application No. 981 Of 2017 seeking for the extension of time to file an application to set aside the dismissal order. The application was granted by Hon. De-Mello, J. on 20.8.2018. Thereafter, on applicant filed an application to set aside dismissal order registered as Misc. Land Case Application No. 935 of 2018. The application was subjected to objection for citing a wrong provision, hence the incompetent application was struck out with costs by Hon. Makani, J on 12/10/2020. He has again knocked on the doors of this court with the instant application.

The respondent filed a counter affidavit sworn by Mr. Kisage Ginche Marwa, in which the conduct of the applicant was doubted. He averred that the order to strike out the incompetent application was not entered because of technicalities but due to the advocate's lack of seriousness in handling the application.

When the application was called for hearing on 2/7/2021 Mr. Anindumi Jonas Semu learned advocate featured for the applicant and submitted that the applicant was diligent in prosecuting the case and was not negligent or delayed unnecessarily. He referred this court on the decision of the Court of Appeal in the case of **Justinian Ndaula v Grace Rwamafa**, Civil application No. 4 of 2014 to cement his position and prayed for the prayers fronted to be granted.

The respondent enjoyed the services of Mr. Kisage Ginche Marwa learned advocate whose submission began by holding the view that the

applicant the affidavit attempted to account for the delay as per the requirement of the law from 18/8/2018 to 12/10/2020 whereby the applicant was prosecuting his case but was unfortunately struck out. He, however, submitted that the instant application was filed on 26/11/2020 after 1^{1/2} months from the date the application was struck out. The learned counsel stated that the applicant ought to account for that period.

Rejoining, Mr. Semu submitted that the delay of 1^{1/2} months was due to follow up of copies of ruling. He prayed this court to invoke the principles of natural justice so that the main case may be heard on merits.

This Court has considered the submissions of both sides and gone through the record. It found, as correctly argued by both sides, that the Land Case Appeal No. 141 of 2015 was dismissed for nonappearance of the applicant with no order as to costs. On becoming aware of the dismissal order, the applicant filed an application of extension of time to have that order set aside. The application was granted on 20/8/2018 by Hon. De-Mello, J. It is also evident that on 12/10/2020 the applicant filed Misc. Land Case Application No. 935 of 2018 but was struck out for being incompetent by citing a wrong provision law on 12/10/2020. Untired, the applicant filed the current application on 26/11/2020.

The law on extension of time is well settled in our land. First of all, extension of time is in the discretionary power of the courts. The applicant in an application for extension of time is required to establish good cause in order for the court to exercise its discretionary powers to extend the time. In the famous case of **Alliance Indurance Corporation Ltd vs. Arusha Art Ltd**, Civil Application No. 33 of 2015 (unreported) the Court of Appeal of Tanzania explained that extension of time is a matter of

discretion of the Court and the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time. A person who proposes to have time extended he must have sufficient material in order to enable the Court to move away from its time table for disposal of case, that is; cases must have time limit.”

The criteria for a court to grant extension of time were clearly elaborated in the case of **Yusufu Same and Another V Hadija Yusufu**, Civil Appeal No. 01 of 2012 (unreported) in which the Court of Appeal of Tanzania set out criteria for a court to extend time as:

- (i) Whether the application was brought promptly.
- (ii) Whether there is valid explanation for delay.
- (iii) Lack of diligence on the part of the applicant.

In this matter the Applicant gives a reason for delay to file his application as being prosecuting Misc. Land case Application of 2018 which was struck out. I agree with Mr. Semu that after delivery of the ruling the applicant needed copies of ruling and drawn. By that time the policy was to supply the same within 14 days after the delivery of the decision. So, I give him benefit of doubt.

With respect I think, at this juncture, that the applicant has been vigilant. He has in all conditions and circumstances acted promptly by filing applications. I am firm to consider this application fit to exercise my discretionary powers because there was no sloppiness, laxity or negligence on the part of the applicant. Quick efforts by a party in pursuing his rights have been taken to account for delay, therefore, constituting good cause. In the case of **Mary Mchome Mbwambo and Another Vs. Mbeya Cement Company Ltd** [2017] TSLR 277 the Court of Appeal of

Tanzania found as a matter of facts that the sequence of efforts made by an applicant to pursue her right of appeal positively accounted for the delay as such she cannot be blamed for been an action or negligent.

In this matter the applicant has acted promptly and assigned good cause for the delay. I am also convinced that the respondent will not be prejudiced in any way. The applicant has spectacularly passed the test set forth in the case of **Yusufu Same and Another Vs. Hadija Yusufu**, (supra)

In the upshot and for the reasons stated above I allow the application and grant the prayers prayed in the Chamber Summons by extending the time within which the applicant to file an application for re-admission of Land Appeal No. 141 of 2015 out of time within fourteen (14) days from the date of this ruling. I make no order as to costs. It is so ordered.

Dated at Dar es Salaam this 2nd day of July, 2021



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J. M. KARAYEMAHA
JUDGE