

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

MISC. LAND APPLICATION NO. 366 OF 2018

THE ATTORNEY GENERAL.....APPLICANT

VERSUS

M/S PRIME ASSETS (T) LIMITED.....RESPONDENT

*Last Order: 12/11/2020
Ruling date: 12/02/2021*

R U L I N G

MANGO, J

Before me is an application for extension of time to set aside dismissal order issued by this court in Land Case No. 62 of 2013 and seeking restoration of the case. The application is by way of Chamber Summons made under Order IX Rule 9 and Section 95 of the Civil Procedure Code, [Cap 33 R. E. 2019], and Section 14(1) of the Law of Limitation Act, [Cap. 89 R. E. 2019]. The application is supported by an affidavit sworn by Sylvester Anthony Mwakitalu, a State Attorney employed in the Office of the Applicant. The application is opposed by the respondent who filed a counter affidavit sworn by AUIDAX KAHENDAGUZA VEDASTO, the advocate of the respondent.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the transparency and accountability of the organization. This section also outlines the various methods used to collect and analyze data, ensuring that the information is reliable and up-to-date.

2. The second part of the document focuses on the implementation of the proposed changes. It details the steps involved in the rollout process, from initial planning to final execution. This section also addresses potential challenges and provides strategies to overcome them, ensuring a smooth transition to the new system.

3. The third part of the document discusses the impact of the changes on the organization's overall performance. It highlights the positive outcomes achieved, such as increased efficiency and cost savings. This section also includes a comparison of the current state with the projected future state, demonstrating the long-term benefits of the proposed changes.

4. The fourth part of the document provides a summary of the key findings and conclusions. It reiterates the importance of the changes and the commitment of the organization to continuous improvement. This section also includes a call to action, encouraging all stakeholders to support the implementation of the changes and contribute to the organization's success.

The application was argued by way of written submissions. According to the affidavit filed in support of this application and the applicant's submission, the applicant seeks extension of time to apply for setting aside the dismissal order in Land Case No. 62 of 2013 on the ground that he was not aware of existence of such an order. Paragraph 13 of the applicant's affidavit indicates that applicant became aware of the dismissal order when the respondent raised a preliminary objection in Misc. Land Application No. 656 of 2016. By that time 30 days had already lapsed thus, the applicant had to file an application for extension of time before applying for setting aside the dismissal order.

The applicant's counsel, Mr. Benson Hosea, learned State Attorney, submitted as to the reason for setting aside the dismissal order. In this he reiterated what has been averred in para 5 to 11 of the affidavit. According to the said paragraphs, the applicant was not aware that the case was set for hearing on 19th July 2016 as the applicant was not served with any summons to that effect. He argued that, the applicant had lodged a formal request to have all cases involving the Attorney General to be adjourned due to shortage of Attorneys to attend them pending finalization of election petitions. The reason for shortage of state Attorneys was mentioned in paragraph 7 and 8 of the affidavit that the attorneys were attending Post October 2015 Election Petitions.

The learned State Attorney argued that the Court order dismissing the case was Illegal as it was issued when the court did not issue any summons for the applicant to appear. Citing the case of **Principal Secretary, Ministry of Defence and National Service Versus Devram Valambia** [1992] TLR 182 and **Kashinde Machibya Versus**

Hafidh Said, Civil Application No. 48 of 2009 he argued that illegality is a good ground for extension of time.

In his reply submission, the respondent counsel raised an objection that the application is omnibus as it contained more than one application. He argued that the application contains three applications, an application for extension of time to allow the applicant file an application to set aside a dismissal order, application to set aside dismissal order, and application for restoration of Land Case No. 62 of 2013. Citing the decision of the Court of Appeal of Tanzania in **Mohamed Salimin Versus Jummanne Omary Mapesa**, Civil Application No. 7 of 2012 prayed the application to be struck out for being omnibus.

As to the prayer for extension of time and set aside the dismissal order, the learned counsel argued that the applicant had not advanced any plausible justification for the Court to exercise its discretion and extend time for the applicant to apply to set aside the dismissal order. He submitted that, he does not find any illegality in court proceedings. Citing the case of **Lyamuya Construction Company Limited Versus Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 and **Ngao Godwin Losero Versus Julius Mwarabu** Civil Application No. 10 of 2015 the learned counsel argued that not all illegalities are good reasons for extension of time. Illegality for purposes of extension of time must be apparent on face of record and such a point of law must of sufficient importance.

On the requirement to account for each day of delay, the learned counsel argued that, applicant failed to account for the delay of 19 month from 30th November 2016 when his application was struck out to 18th June 2018 when this application was filed. He then prayed for dismissal of the application with costs.

In his rejoinder, the applicant counsel reiterated his submission in chief.

I have considered submission by the parties and court record. On whether the application is omnibus or not, this court finds it to be omnibus as argued by the respondents counsel. However, Omnibus application are not fatal and they are allowed in situations where the grant of one application paves way to another. The reason for allowing omnibus application is to avoid multiplicity of applications between same parties and ensure timely justice to the citizenry. See the decision of the Court in **Pride Tanzania Limited Versus Mwazani Kasatu Kasamia** Misc. Commercial Cause No. 230 of 2015 High Court of Tanzania (Commercial Division) at Dar es Salaam. As to the case at hand, the application for extension of time if granted will pave way to application to set aside the dismissal order which if granted it means, Land Case No. 62 of 2013 is restored. Therefore, this court will proceed to determine the application despite being omnibus because the applications contained herein are interrelated.

As to the application for extension of time, the reason advanced by the applicant that he was not aware of the dismissal order and the undisputed fact that the applicant filed a formal request for his non-appearance is sufficient ground for extension of time. However such reason justified his delay up to 30th November 2016 when the applicant became aware of the

dismissal order. The applicant failed to account for the entire period of delay especially from 30th November 2016 when he became aware of the dismissal order to, 20th June 2018, the date of filing this application. As correctly argued by the respondents' counsel, the applicant failed to account for his delay to file this application for almost two years. This establishes negligence on the part of the officers entrusted to prosecute this matter. However due to seriousness of the dispute between the parties and the fact that prosecution of suits for or against the Government depends solely on the integrity of the officers entrusted to prosecute the case, I find it in the interest of justice to extend time for the applicant to file an application to set aside the dismissal order. In holding so I am alert that negligence of the counsel for the parties may not be considered to be a good ground for extension of time but, each application need to be considered on its own facts, merits and circumstances as it was held in the case of **Selina Chibago Versus Finihas Chibago** Civil Application No. 182A of 2007, Court of Appeal of Tanzania at Dar es salaam.


With regard to the application to set aside the dismissal Order, the applicant has advanced a single reason for his non-appearance when Land Case No. 62 of 2013 was dismissed. According to his affidavit, the applicant was not aware that the case was scheduled for hearing on 19th July 2016. The applicant argued that he was not summoned to appear for hearing on the date the dismissal order was issued. I am aware that parties need to make follow up of their cases. The law requires that parties be summoned when their matters are called before the court. Failure to notify the party on proceedings involving him renders to infringement of the right to be heard on the party who is not summoned. However, summons are in most

cases issued to the defendant to make him informed of the cases instituted and enable him to appear and defend the same. The entire Order V of the Civil Procedure Code, [Cap 33 R. E. 2019] provides for summons to the defendant and witnesses. A person who instituted his case need to make follow up on the progress of his case except in special circumstances as in this application.

In the application at hand the applicant requested for an adjournment and prayed to be notified as to when the matter will be scheduled through a court summons. The request letter, though written on 31st March 2016 it was received by the court on 14th April 2016 and filed in the case file. Fortunately, on 11th April 2016, the Court adjourned the matter to 19th July 2016. However no summons was issued. On 19th July 2016 the Court granted the prayer to have the case dismissed for want of prosecution. The prayer was granted in forgetfulness of a formal request by the applicant to have the case adjourned and be informed on the next scheduled date. In such circumstances, I find the non-appearance of the applicant on 19th July 2016 to have been caused by a sufficient reason.

For that reason, I hereby set aside the dismissal order in Land Case No. 62/2013. Given the nature of the application, I award no costs.




Z. D. MANGO
JUDGE
12/02/2021