

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.196 OF 2021

(Arising from the Land Case No. 427 of 2016)

**JOSEPH MSHANA (As an Administrator of the Estate of the late
Naginder Singh Matharu).....APPLICANT**

VERSUS

EVELYNE MBUNA.....RESPONDENT

RULING

Date of Last Order: 29.09.2021

Date of Ruling: 11.11.2021

OPIYO, J.

This application was brought under section 14(1) of the Law of Limitations Act, cap 89 R.E 2019. The applicant is seeking for an order of extension of time in order for him to file an application to set aside an abetment order, dated 31/8/2020 in Land case no. 427 of 2016. The application was accompanied by the affidavit of the applicant himself, Joseph Mshana. The same was heard by way of written submissions, Advocate Salha Salehe Mlilima appeared for the applicant while the respondent was represented by Advocate Gasper Nyika.

In her submissions, the applicant counsel maintained that the delay to file the applicant's intended application was not caused by negligence or laxity on his part, rather was due to the long court process that was involved in obtaining the letters of Administration. That, he applied for letters of

Administration on the 9th of October, 2020 and was given the said same on the 25th February 2021. In his submissions, the counsel for the applicant cited the case of **Akwiline Flavian Marandu versus CRDB Bank Plc and Another** where the Honourable Judge quoted the case of **NBC Limited & Another versus Vitus Swalo, Civil Application No. 139 of 2009** where it was observed that:-

"However, in an application for enlargement of time, the practice in this court and court of Appeal has shown that; the court may consider the following factors: length of delay, the reason for delay, the degree of prejudice and whether or not the applicant was diligent."

Other cases cited by the applicant's counsel include the case of **Lyamuya Construction Company Limited versus Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No.2 of 2020.**

In reply, Advocate Gasper Nyika for the respondent relied on the case of **Lyamuya Construction Company Limited, supra** and maintained that the applicant in this application has failed to give a sufficient cause for his delay to file his intended application. That, the reason given by the applicant's Advocate that the delay was caused by long court processes in obtaining letters of Administration for the estate of the late Naginder Singh Mathuru is unfounded. According to the counsel for the respondent, this allegation is not backed by any evidence such as when the said matter was instituted in court. He also insisted that as per Lyamuya case, supra, the applicant did not account for each day of delay. That, according to

paragraph 4 of the applicant's Affidavit, he stated that he obtained the letters of Administration on the 25th of February, 2021, however the instant case was filed on the 30th of April 2021 which is over two months from the date when the said letters were obtained. The delay of two more months has not been accounted for. Mr. Nyika concluded his submissions by insisting that, it is obvious that the applicant's delay was caused by his acts of negligence and laxity as the facts show that the applicant if at all was serious to pursue his intended cause would have filed the application to set aside the abetment order immediately after obtaining the letters of Administration on 25th of February 2021.

I have considered the arguments of the applicant and the respondent through their learned Advocates. I also went through the affidavit in support of the application as well as the counter affidavit. The issue for determination is whether the applicant has shown sufficient cause for delay warranting granting the application.

It is agreed that, in applications of this nature that, the court is only interested in two major things namely; (1) the applicant has provided a sufficient reason that led to his delay to pursue his intended cause and (2) he or she has accounted well for all the days he delayed to take the needed action, see **Exim Bank (T)Limited versus Jacqueline A. Kweka, Civil Application No. 348/18 of 2020, Court of Appeal of Tanzania, (unreported)**.

In this case, the applicant has clearly stated that, his delay to present his intended matter was caused by the delay to obtain the letters of Administration from the court, as stated at paragraphs 3 and 4 of the

applicant's affidavit. That being the case, he deserves leniency from this court as the delay was not caused by negligence on his part as stated in the case of **Felix Tumbo Kissima versus Tanzania Telecommunication Co. Ltd and Another (1997) TLR 57** that,

"It should be observed that "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step"

I may agree with the counsel for the applicant that fact amounts to a good cause, sufficient to allow the application at hand. However, there are two months that seems not well accounted for by the applicant after obtaining the letters of administration which could bring hesitation in granting the application on the ground of not well accounting for each day of delay as required under the law. That is, from the 25th of February to when he obtained those letters to April 30th when this Application was lodged. However, I am alive to the fact that an application for extension of time is entirely in the discretion of the court to grant or refuse it, the discretion that must be exercised judicially having supporting stuff to do so. Looking on the nature of the circumstances at hand in which the land case was abated for delay in impleading the legal representative of the then plaintiff, it is thought order XXII rule 3(2) of the Civil Procedure Code Cap 33 RE 2019. That was done on 31/8/2020, that was about six months before the letters of administration was gotten in February 2021. This kept the rights of the deceased plaintiff at stake. As the current applicant is not suing in personal capacity rather in representative capacity,

sometime may elapse putting together number of issues relating to the estate administered including rationalization of a need to proceed with the inherited cases like the one that abated. Therefore, preparation for filing this kind of application to protect interest of a deceased person may take some days. The days that are alleged to have not been accounted for are about two months. In my considered view, the two months delay for this kind of situation is not inordinate delay worth punishing the deceased for. I therefore find it necessary to use my discretionary powers for the interest of justice giving due consideration on the nature of the case to allow this application so that the applicant can be afforded the opportunity to pursue his intended cause on behalf of the late Naginder Singh Mathuru. Application to set aside the abatement order be made within 14 days from the date of this order. No order as to costs.



A handwritten signature in black ink, appearing to be "M.P. Opiyo", written over a horizontal line.

M.P. OPIYO,

JUDGE

11/11/2021