

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 229 OF 2022

(Arising from Land Case No. 190 of 2021)

EMMANUEL GITIGAN GHERABASTER.....APPLICANT

VERSUS

SAID NASSOR SAID.....RESPONDENT

Date of last order: 30/8/2022

Date of ruling: 13/9/2022

RULING

A. MSAFIRI, J.

On the 16th day of May 2022, the applicant lodged an application in this Court by way of chamber summons under Sections 3B (1) (a), 8, 93 and 95 of the Civil Procedure Code [CAP 33 R.E 2019] and Section 14 (1) and item 21 of Part III of the Schedule to the Law of Limitation Act [CAP 89 R.E 2019], for the following orders;

- i. *An order be made by this Honourable Court for an extension of time within which to apply for stay of hearing of Land Case No. 190 of 2021, either inter parties or ex-parte pending determination of Land*

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*Case No. 84 of 2014 instituted on 29th day of October
2014 in the High Court of Tanzania Dar es Salaam
Registry Dar es Salaam.*

- ii. *Costs of this application be provided for*
- iii. *Any other relief or order as this Honourable Court may deem fit and just in the circumstances.*

The application has been taken at the instance of K. M. Nyangarika & Co. Advocates and is supported by an affidavit sworn by the applicant herein.

In this application, Messrs Nyangarika and Mlyambebele learned advocates represented the applicant and the respondent respectively. The application was disposed of by written submission pursuant to the order of the Court of 1st August 2022.

It was prayed by the applicant on the submission in support of the present application, that the Court grant an extension of time within which to file an application for stay of hearing of counter claim against the applicant raised in Land Case No. 190 of 2021.

It is gathered from the record of this application that, the applicant had earlier on instituted Land Case No. 84 of 2014 at the High Court of Tanzania Dar es Salaam Registry. The Court was told that while the said

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matter was still pending the applicant was wrongly advised by his former advocate namely Mr. Samson Rusumo to file another matter before this Court namely Land Case 190 of 2021 against the respondent. It is contended that in Land Case No. 190 of 2021 the respondent raised a counter claim against the applicant. The counter claim is set to proceed after the main suit was struck out on 8th April 2022.

The applicant has submitted at length on the nexus between the two cases namely Land Case No. 84 of 2014 as well as Land Case No. 190 of 2021 contending that there might be conflicting decisions if Land Case No. 190 of 2021 currently pending before this Court will not be stayed. In this application as the applicant seeks an extension of time, the reason advanced by the applicant to have the court exercise its discretion for extension of time is a technical excusable delay.

On reply, the respondent submitted that there is no any reason advanced by the applicant to have the Court grant the prayer sought in the present application. The respondent has submitted further that the technical excusable delay raised by the applicant does not feature in the affidavit in support of the application. Since the same does not feature in the affidavit in support of the application the same is rendered as a *Adlle.*

submission from the bar hence it should not be given any consideration by the court.

To fortify his stance, the respondent has referred to me the decision of the Court of Appeal in **Farida F. Mbarak and another v Domina Kagaruki & 4 others** Civil Reference N. 14 of 2019 Court of Appeal of Tanzania at Dar es Salaam (unreported).

According to the respondent a technical delay is permissible under the law only if the applicant could have been in the court corridors throughout the entire period of time when computing the alleged time. In the instant matter the only period which the applicant was in the corridors is from 8th November 2021 to the 8th April 2022 and not otherwise.

Similarly the respondent has contended that the applicant has not accounted for each day of the delay for over 37 days hence the Court should not grant the prayers sought in the present application.

As to the two cases filed in this Court, the respondent contended that it was the applicant who could avoid institution of such suits. According to the respondent, the applicant's act of instituting the present matter makes any reasonable person to believe that there was no any pending suit before this Court bearing the same claims. *Adle*.

The respondent therefore prays for the dismissal of this application for lack of merits.

On rejoinder the applicant essentially reiterated the submission in chief.

Having gone through the submissions of the parties, rival and in support of the application the issue which calls for the Court's determination is whether the application has merit.

Parties to the present application are at one with the requirements to show sufficient reasons for application of extension of time like the present one. However what parties are in disagreement with is the reason advanced to have the Court exercise its discretion for extension of time.

It is trite law that in an application for extension of time to do a certain act, like in present one, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time. See the cases of **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application no. 4 of 2014 (both unreported).

I will first address the reason advanced by the applicant namely technical delay. As rightly submitted by the respondent this point was

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raised by the applicant in the course of his submission. The affidavit in support of the application at hand does contain any statement that the applicant was unable to file the application in time because of the technical delay. Hence as the facts have been brought up in the course of submission and not in the affidavit, those statements remain mere and unproven assertions because no evidence has been in affidavit to prove the allegations in the statement.

In the case of, **The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006 (supra), the Court of appeal held:

" . . Submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence."

Hence the averment that that there is a technical delay as the same did not feature in the affidavit is hereby disregarded. Even on the 11th page of the submission by the applicant there is only one sentence on technical

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delay but no any explanation has been given by the applicant how technical delay arises in the present matter.

On the issue of stating reasons for the delay, the affidavit in support of the application is silent as to why the applicant did not file the application in time. I have keenly gone through the affidavit in support of the application, as I have stated earlier, the applicant for the reasons known to himself had earlier on instituted Land Case No. 84 of 2014 before the High Court Dar es Salaam Registry, while the said case was still pending he preferred another case before this Court namely Land Case No. 190 of 2021.

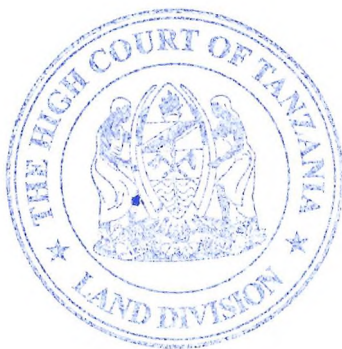
At all the material times the applicant was silent regarding the former case he had filed before until when the latter case was struck out. In the latter case the respondent raised a counter claim against the applicant. The applicant did not file written statement of defence to the said counter claim hence the Court ordered for the same to proceed *ex parte* against him.

Having seen the counter claim has been fixed for hearing *ex parte* against him, the applicant quickly lodged the present application seeking for extension to have hearing of the said counter claim stayed. *Aelle.*

The applicant has alleged issues of res subjudice and that there will be likelihood of having conflicting decisions because of the two suits pending before this Court. I think by not raising this issue at the earliest stage as possible until the Court fixed hearing of the counter claim *ex parte* is a clear and deliberate move by the applicant to delay the determination of dispute and this has to be discouraged.

In the affidavit in support of the application, the applicant has not stated why he did not file the application in time until when the Court fixed a date for hearing of the counter claim *ex parte* against him. Failure to show sufficient reason which is a fundamental requirement before the Court can exercise its discretion for extension would lead the application to be dismissed as I hereby do.

It is for the foregoing reasons I hold that, the application lacks merits and it is hereby dismissed with costs.




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A. MSAFIRI,

JUDGE

13/9/2022