

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

**MISC. LAND APPLICATION No. 667 OF 2022**  
(Originating from Misc. Land Application No. 569 of 2019)

**MAJUTO RAMADHANI MPUTA .....APPLICANT**

**VERSUS**

**SIJA RAJABU MURO .....1<sup>ST</sup> RESPONDENT**

**LINUS F. LYELA .....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

*Date of last Order:22/09/2022*

*Date of Ruling:30/09/2022*

**K. D. MHINA, J.**

The Application, Majuto Ramadhani Mputa, has lodged a chamber summons under Section 14(1) of the Law of Limitation Act, Cap. 89 [R. E. 2002] and Section 95 of the Civil Procedure Code [Cap. 33 R. E. 2019]; seeking an extension of time within which to file an application for review.

The notice of motion is supported by an affidavit and the supplement counter affidavit of the applicant.

The first respondent filed the counter affidavit and supplement counter affidavit, while the second respondent neither appeared before the court nor

filed his counter affidavit. The efforts to secure his attendance even by substituting service by publication in Mwanachi Newspaper dated 8<sup>th</sup> September 2022 proved futile.

When the matter was called for hearing on 23<sup>rd</sup> September 2022, the applicant appeared through Mr. William Changomo, learned advocate, and the first respondent had the services of Mr. Kephass Mayenje, learned advocate.

In support of the application, Mr. Changomo's reason for requesting an extension of time was because the applicant was sick, as per the attached medical card to the supplementary affidavit.

Therefore, he prayed for the Court to accord the benefit of doubt to the applicant that he was sick and cement his position; he cited **Mselem Kandili V R**, Criminal Appeal No. 396 of 2019 (CAT) unreported at page 8, where the Court had given the benefit of doubt to the appellant's explanation on the cause of delay.

In response, Mr. Mayenje strongly opposed the Application. He submitted that the Ruling in which the Applicant is seeking an extension of time to review it was delivered on 05/08/2021, while this application was filed on 05/11/2021, almost three (3) months and 21 days later.

Furthermore, in the affidavit, the applicant did not state any reason for the delay, but in paragraph 7 of the supplementary affidavit, the applicant was trying to hide his negligence by pledging to old age and surrounding circumstances as reasons for the delay.

He further submitted that there must be a good cause for the court to exercise its discretion to grant an extension of time. The applicant was supposed to account for each day of delay.

Mr. Mayenje further argued that the applicant in both affidavits failed to prove that delay. There was no explanation whatsoever for the delay of about two (2) months and 21 days. To cement his argument, he cited **MPS Oil (T) Ltd & two others vs. Citibank (T) Ltd**, Civil Application No. 4 of 2016 (CAT) unreported; where the Court held that:-

*"In Application for extension of time, the applicant has to account for each day of delay."*

In his further reply, Mr. Mayenje submitted that the issue of the applicant's sickness and the attached medical report to the supplementary affidavit was entirely irrelevant because the medical report was dated 7<sup>th</sup> August 2019, while the Ruling the High Court was delivered on 5<sup>th</sup> August 2021

In rejoinder, Mr. Changomo briefly submitted that the Applicant was sick, and that was the reason for the delay. Further, the medical report dated 2019 was genuine, and the applicant suffered from blood pressure from time to time.

From the affidavits and submissions for and against the Application, the issue for consideration is whether the applicant has shown a good cause for the grant of extension of time.

The time prescribed by 14(1) and item III of Part III of the schedule to the Law of Limitation Act Cap. 89 (R: E 2019) to file an application for review is thirty (30) days.

Therefore, the Applicant was supposed to file his application for review after thirty (30) days calculating from the date of decision which is 5 August 2021

On the other hand, he filed this Application on 05/11/2021, almost three (3) months and 21 days. Hence out for nearly 81 days.

The Court of Appeal of Tanzania in **Sebastian Ndaula vs. Grace Rwamafa (Legal Representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014 (unreported) held that:-

*"In an application for extension of time, good cause to extend must be shown."*

As to what constitutes a good cause, again, the Court of Appeal in **Joel Shilomba vs. R., Criminal Application No. 5 of 2012** (Unreported) the Court set the following considerations: -

- i. The length of delay;*
- ii. The reason for the delay;*
- iii. Whether there is an arguable case;*
- iv. The degree of prejudice to the opposite party if the Application is granted.*

In this application, the applicant raised the following as grounds for delay.

**One** is sickness.

**Two**, age and surrounding circumstances.

To start with the issue of sickness. Annexure MR 2 to the supplementary affidavit, i.e., a medical card, indicates that the applicant attended the Dispensary (Blessing Dispensary) on 07/08/2019. The medical card does not

show if he was admitted, whether he was an outpatient, or how long if admitted he was admitted.

In **Juto Ally vs. Lucas Komba & Another, Civil Application No. 484/17 of 2017** (Unreported), the Court held that:-

*"Where the applicant's cause of delay is due to illness, must show that illness contributed to the delay as opposed to a general statement."*

In the applicant's affidavits, it was not averred, and his advocate failed to submit; the connection between sickness, the medical card dated 7<sup>th</sup> August 2019, and why the applicant failed to file a review within time after the Judgment was delivered on 5<sup>th</sup> August 2021.

Further to that, as rightly argued by Mayenje advocate, a medical card dated way back on 7 August 2019 is irrelevant for the Judgment of the High Court was delivered on 5<sup>th</sup> August 2021.

The issue of old age and surrounding circumstances should not detain me long because;

One, in both affidavits and when the counsel submitted at the hearing, he never disclosed the applicant's age.

Two, the surrounding circumstances alleged by the applicant were not disclosed to test whether the circumstances contributed to the delay.

Therefore, there is no evidence that the applicant was sick at the time the judgment was delivered on 5<sup>th</sup> August 2021 and afterward and that sickness had contributed to delay

Therefore, a two (2) months and 21 days (almost 81 days) delay for the application, which was supposed to be filed within 30 days without any good cause for delay, is an inordinate delay. The applicant cannot, in the circumstances given a benefit of doubt as Mr. Changomo urged this Court to do.

In the upshot, the Applicant fails to illustrate a good cause for a grant of extension of time. Consequently, the Application is dismissed for want of merits with costs.

It is so ordered

