

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

MISC. LAND APPLICATION NO.504 OF 2021

*(Originating from Land Application No. 737 of 2017 Originated from
Award of Taxation of Bill of Costs in Misc. Land Case Application No. 41
of 2015)*

UTHMAAN MADATI (Administrator of the
Estate of the late **JUMA POSANYI MADATI** **APPLICANT**

VERSUS

TATU O. FARAHANI **1ST RESPONDENT**

SALIM MADATI **2ND RESPONDENT**

RULING

Date of last Order: 20.10.2022

Date of Ruling: 28.10.2022

A.Z MGEYEKWA, J

This is an application for an extension of time to file an application for setting aside an abatement order of the High Court of Tanzania, Land Division at Dar es Salaam dated 1st April, 2019 in Misc. Land Application No. 737 of 2017. The application has been preferred under the provisions

of section 14 (1) of the Law of Limitation Act, Cap. 89 and Order XXII Rule 9 (2) and section 95 of the Civil Procedure Code Act, Cap.33 [R.E 2019]. The application is supported by an affidavit affirmed by Uthamaan Madati, the applicant, setting out grounds on which prayers are sought. In the supporting affidavit, the applicant stated the reasons for his delay. The applicant's contention is gathered from paragraphs 5, 6, 7, 8, 9, and 10 of the affidavit. The applicant's application was contested by a counter affidavit of Alfred David Shanyangi, the 1st respondent.

At the hearing of the application, the applicant was represented by Mr. Halfani, learned advocate, while Swai, learned counsel advocated for the respondent, and the 2nd respondent appeared in person, unrepresented. The 2nd respondent did not object the application. By the consent of this court, the parties argued the application by way of written submissions whereas, the applicant filed his submission in chief on 3th October, 2022, and the 1st respondent filed his reply on 13th October, 2022. The applicant filed his rejoinder on 17th October, 2022. While seeking to adopt the contents of the affidavit affirmed support of the application, Mr. Alfred submission was brief and straight to the point.

He contended that the applicant is applying to set aside the abatement order of this Court delivered by Hon. Mgonya, J on 1st April, 2019 in Misc. Land Application No. 737 of 2017. The counsel submitted that there is a

Bill of Costs in Misc. Application No. 41 of 2015 originating from the exparte judgment and decree dated 30th April, 2015. In Land Case No. 123 of 2013. The counsel went on to submit that Juma Posanyi Madati passed away on 11th July, 2018, and the abatement order was made on 1st April, 2019. The counsel added that the applicant was appointed to administer the estate of the late Juma Posanyi Madati on 16th August, 2019, and thereafter they made efforts to seek an extension of time to apply to set aside the abatement order.

He continued to argue that the applicant filed a Misc. Land Application No. 389 of 2020, however, was struck out on 26th July, 2021. He claimed that the Bill of costs was filed 60 days out of the prescribed time, in his view the Misc. Land Case Application No. 41 of 2015 and its decision are tainted with illegality. He claimed that the applicant after being appointed to administer the estate of the late Juma Posanyi Madati acted diligently and promptly in taking legal steps toward pursuing Misc. Land Application No. 737 of 2017. He added that the respondents will not be prejudiced by the grant of the order sought. He wants this court to examine the Taxation cause in Misc. Land Case Application No. 41 of 2015.

On the strength of the above submission, the applicant's counsel beckoned upon this court to allow the application with costs.

Mr. Swai strongly opposed the applicant's contention. He hastened to conclude that there is no sufficient cause exists in the intended application. Mr. Swai urged this court to adopt the counter affidavit sworn by Alfred David Shanyangi to form part and pad parcel of his submission. He submitted that it is trite principle of the law in a plethora of decisions that whoever seeks an extension of time must meet the principles which must be fulfilled. To buttress his contention he cited the cases of **Mega Builders Ltd v D.P.I Simba Ltd**, Civil Application No. 319 of 2020 and **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported).

The learned counsel argued that the applicant is seeking to set aside the order dated 1st April, 2019, and the applicant was appointed to administer the estate on 16th August, 2019 and the instant application was filed on 1st November, 2021 after a lapse of two years and three months, the delay which is not accounted for by the applicant. He insisted that the Court of Appeal of Tanzania in **Mega's** case (supra) held that the applicant's unexplained delay of more than two years is inordinate. He argued that the cited case is similar to the case at hand. He went on to argue that the ground of illegality requires a long process to discover it while the Court has held that the illegality claimed must be apparent on the face of the record. Fortifying his position Mr. Swai referred this Court to the case of

Mega (supra) whereas the Court of Appeal held that failure to account for each day of delay and hold on illegality as a good ground for extension of time cannot stand.

He submitted that the applicant was represented throughout in the series of applications filed in different courts and all suffered rejection thus the applicant cannot claim that his delay was caused by the ongoing litigation as advocates.

In conclusion, the counsel for the 1st respondent insisted that the applicant has failed to adduce sufficient cause which warrants the grant of this application he urged this Court to dismiss the application with costs.

In rejoinder, Mr. Halfan maintained his contention that the applicant has adduced sufficient reasons for the extension of time. He added that only administrators of the deceased's estate can file applications of this kind as stated under Order XXUU Rule 3 (1) of the Civil Procedure Code, Cap.33. he distinguished the cited case of Mega (supra) from the instant application in that the applicant in the cited case did not raise points of illegalities. Ending, he beckoned this Court to allow the application with costs.

I have considered the learned counsel for the respondent submission. From the outset, respondents. The ball is now in on the side of the Court.

The parties' rival submissions raise one key question. This is as to *whether or not the application has passed the threshold for its grant.*

I wish to start by underscoring, first, that it is settled law that applications of this nature will only succeed upon the applicant showing reasonable or sufficient cause for the delay. This is a requirement of section 14 of the Law of Limitation Act, Cap. 89 under which the present application has been made. To grant or not to grant extensions is within the unfettered discretion of the Court. This unfettered discretion is only subject to the obvious fetter of all discretions; that is, it must be exercised judicially the same was held in the cases of **Lalji Gangji v Nathoo Vassanjee** [1960] 1 EA 315 and **Noormohamed Abdulla v Ranchhodbhai J. Patel & another** [1962] 1 EA 447.

Moreover, in order to establish that the delay was with sufficient cause, the applicant must not only demonstrate reasons for the delay but also satisfactorily declare and account for each day of delay. The substance of the matter and, in this respect, the legal position is that an extension of time, being an equitable discretion, its exercise must be judicious. As stated in numerous decisions, such discretion must be on a proper analysis of the facts, and application of law to facts, the grant of which is done upon satisfaction by the applicant through the presentation of a credible case upon which such discretion may be exercised.

Encapsulating the foregoing position, the Court of Appeal of Tanzania made the following position in the cases of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) which was delivered in May, 2019 and the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), it held that:-

“Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay.”

Guided by the above authority means that to justify her delay, the applicant is duty-bound to account for the days of delay. I have perused the affidavit and submission made by the applicant's counsel and noted that the applicant's counsel's sole reason for the delay is that the process of appointing the administrator of the estate was delayed.

The records shows that the impugned Ruling was delivered on 1st April, 2019 and the applicant was appointed to administer the estate of the late Juma Posanyi Madati on 16th August 2019. Time started to run from the date when the applicant was appointed to administer the estate of the Juma Posanyi Madati on 16th August 2019 and the applicant lodged the instant application on 20th September, 2021. Counting from the date when the applicant was appointed to administer the estate of the late Juma Posanyi Madati to the date when he lodged the instant application on 20th

September, 2021 is a lapse of approximately two years, thus the applicant was required to account for every day of delay. I have gone through the applicant's affidavit and noted that the applicant on paragraph 15 stated that he wrote a letter to this Court requesting for certified copies of the ruling, drawn order and proceedings. To support his submission the counsel referred this Court to annexure 'L', I have read the said annexure and noted that there is no prove that Misc. Land Application No. 389 of 2020 was certified on 27th August, 2021.

Moreover, the applicant did not account each day of delay from the date when he was appointed to administer the estate of the late Juma Posanyi Madati on 16th August, 2019 to the date of filing the instant application on 20th September, 2022. I am saying so because the reasons for his delay stated by the applicant is concerning the Bill of Costs instead of the impugned ruling at hand. The applicant was required to distinguish the facts of this two applications because the Bill of Costs was filed in this court in 2015 while the impugned decision was delivered on 1st April, 2019. Thus, the facts related to Bill of Costs are irrelevant. Therefore, this ground of accounting days of delay crumbles.

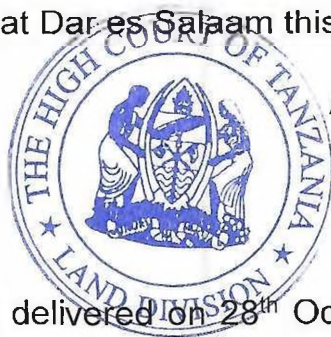
Regarding the ground of illegality, from the outset, I have to say that there is no any illegality related Misc. Land Application No. 737 of 2017. Reading paragraphs 5, 6, and 11 of the affidavit, shows that the counsel

has submitted in length on the points of law related to the Taxing Master's decision dated 27th October, 2016, while the application at hand is referring to the abatement order dated 01st April, 2019. in paragraphs 15 to 19 of the applicant's affidavit, raised aground of illegality and law submitted in length concerning Misc. Land Case Application No. 41 of 2015, while in his chamber summons, the applicant is referring to Misc. Land Application No. 737 of 2017. It is crystal clear that the applicant has filed mixed grill causes. Therefore, I fully subscribe to the submission made by the counsel for the respondent that the applicant has not adduced sufficient reasons to move this Court to grant his application.

In consequence, thereto, I find that the applicants have failed to advance sufficient reasons to warrant this court to use its discretion to extend time within which to file an application for setting aside the abatement order of this Court. The application is therefore dismissed with costs.

Order accordingly.

Dated at Dar es Salaam this date 28th October, 2022.



A.Z.MGEYEKWA

JUDGE

28.10.2022

Ruling delivered on 28th October, 2022 via video conferencing whereas both learned counsels were remotely present



A.Z.MGEYEKWA

JUDGE

28.10.2022