

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

MISC. LAND CASE APPLICATION NO. 111 OF 2021
(Arising from Misc. Land Case Application No. 678 of 2020)

MAYNARD LUGENJA.....APPLICANT

VERSUS

**THE MUNICIPAL DIRECTOR OF
KINONDONI MUNICIPAL COUNCIL.....1ST RESPONDENT
MICHAEL LEMA BATHROMEO.....2ND RESPONDENT**

Date of Last Order: 05.09.2022
Date of Ruling: 31.10.2022

RULING

V. L. MAKANI, J

This is an application by MAYNARD LUGENJA. He is praying for the following orders:

- 1. That the honourable court may be pleased to extend time to the applicant within which to file application for review of the decision of this Court (Hon. Mteule, J) dated 24/05/2021 in Misc. Land Application NO. 678 of 2020.*
- 2. Costs be provided for.*
- 3. Any other order(s) and/or relief(s) as the honourable court may deem just and fit to grant.*

The application is made under section 14(1) of the Law of Limitation Act CAP 89 RE 2019 and is supported by the affidavit of the applicant herein. The respondents filed counter-affidavits in opposition of the said application.

The application proceeded orally whereas Mr. Ogunde, Advocate appeared for the applicant, while Mr. Mwambalasa, State Attorney and Mr. Goodchance Lyimo appeared for the 1st and 2nd respondents respectively.

In his submissions Mr. Ogunde stated that what an applicant is supposed to demonstrate in an application for extension of time is sufficient cause. He said according to the affidavit of the applicant the reasons that constitute sufficient cause are three and are found in paragraphs 8 to 16 of the affidavit. He said the impugned decision was delivered on 24/06/2021 and in that decision the applicant sought for an order to withdraw his application for leave to appeal with leave to refile that application. He said the prayer for withdrawal was granted but the court did not say anything about leave to refile. He said the applicant had 60 days to file review, but the applicant did not do so for reasons in paragraphs 10 to 16 of his affidavit in that he was

sick and the applicant also filed another application which was struck out by this court on 25/02/2022. The application that was struck out was also an application for leave to appeal which the applicant believed that the court has granted him leave to refile. He said these reasons suffices to constitute good cause.

Mr. Ogunde submitted that the ground of sickness is supported by medical chit as in paragraph 6 of the affidavit. He said the striking out of Misc. land Application No. 561 of 2022 constitutes to a technical delay which is excusable where there is a delay. He said copies of the ruling of the said application were supplied to the applicant on 04/03/2022. The ruling is important as this application could not have been taken without the said ruling. He said this application was filed on 16/03/2022 which is a period of only 12 days for preparation, filing online and admission of the application. The period from 24/06/2021 to 16/03/2022 has been sufficiently accounted for to warrant the court to exercise its discretion to extend time for the applicant to file his application for review. Mr. Ogunde prayed for the grant of this application and costs to be in the cause.

In reply Mr. Mwambalaswa adopted the contents of his counter affidavit. He said the applicant has failed to advance good reasons for the delay. He relied on the case of **Republic vs. Yona Kaponda [1985] TLR 85** where the court said the court when granting extension of time has to get sufficient reasons for the extension of time and also sufficient reasons for the delay. He said Counsel for the applicant advanced two reasons for the delay that is sickness and technical delay. He said for sickness the attached medical report which does not show when the applicant was admitted and when he was discharged as such it is very difficult for the court to ascertain the time when the applicant was sick after the withdrawal of the application. He said there is also a contradiction, while Counsel said the applicant could not file application for leave because he was sick, on the other hand he said the applicant filed the application for leave. He said with these submissions the reason of sickness cannot stand as a reason for the delay. Mr. Mwambalaswa went on saying that technical delay cannot constitute sufficient reasons since it was negligence because the applicant opted to file another application instead of review. He prayed for the application to be dismissed with costs.

Mr. Goodchance Lyimo for the 2nd respondent adopted the contents of his counter-affidavit. He said applications of this nature are in the discretion of the court and the discretion has to be exercised judiciously as propounded in the case of **Mbogo & Another vs. Shah [1968] EALR 3**. He said an applicant ought to demonstrate sufficient cause warranting the delay as guided by the Court of Appeal in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Womens' Christian Association of Tanzania, Civil Application No. 02 of 2019 (CAT-Arusha)**(unreported) and the case of **Ngao Godwin Losero vs. Julius Mwarabu, Civil Application No. 10 of 2015 (CAT-Arusha)** (unreported). As for sickness Mr. Lyimo said there is no supporting medical report to substantiate the narration that the applicant was sick from 24/06/2021 to 16/03/2022 when this application was filed. As for technical delay he said the decision of Hon. Mteule, J was clear of ambiguity in that the prayer for withdrawal was granted but not the refiling. He said this is due to the discretionary powers envisaged in Order XXIII ule 1(2) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). He said there is therefore no error apparent on the face of the record that the court is to be blamed. He said if he wanted to challenge the decision of Hon. Mteule, J he would

have applied for review in time, but he opted to file a similar application (Misc. Land Application No. 561 of 2021) which was also struck out. He said the filing of the latter application is total negligence and cannot constitute sufficient reason to warrant extension of time. He went on saying the applicant cannot be pardoned for failure to observe procedure to seek redress/relief such as extension of time. He said ever since 24/06/2021 when the decision by Hon. Mteule, J was made until 23/08/2021 when the applicant ought to have filed his application for review has not been accounted for. From 27/09/2021 when he said he engaged Mr. Ogunde to 16/03/2022 when he filed this application, but the delay has not been accounted for. From 25/02/2022 when the application for leave (Misc. Land Application No. 561 of 2021) was struck out by Hon. Mgeyekwa, the delay has not been accounted. He said the 18 days said by Counsel for preparation, online filing and admissions has not been substantiated by affidavit or even a supplementary affidavit so it remains hearsay. He pointed out that in paragraph 12 of the affidavit there is a point of illegality that is lack of assessors. He said this reason did not feature in the decision of Hon. Mteule, J. He went on saying that there is no evidence that the copy of the decision of Hon. Mgeyekwa, J was availed to the

applicant on 04/03/2022 as alleged. He prayed for the application to be dismissed with costs.

Mr. Ogunde in his rejoinder submitted that the medical report shows that the applicant had been to the hospital since 2017 and he has continued to do so as he is suffering from cardio problems and that cannot be handled within. He said there is no contradiction because of the sickness but the sickness and the filing of the filing fall sequentially. He said paragraphs 10 to 11 contains averments of sickness since the date of decision of Hon. Mteule, J and upon getting relief (paragraph 11) he then filed the application before Hon. Mgeyekwa, J. He went on saying that there was no negligence as the applicant acted bonafide thinking that leave to refile was granted. He reiterated his main submissions and pointed out that from the date of the decision of Hon Mteule, J to the date of the filing of this application, the applicant has accounted for each and every day of the delay. He stressed that the applicant has been vigilant in this matter and there is no apathy on his part. He restated his prayer of grant of the application and costs be in the cause.

I have listened to the submissions by Counsel for the parties herein. I have also gone through the affidavit and counter affidavits filed in support of the respective cases by the parties. The main issue for consideration is whether this application has merit. Briefly stated, the applicant filed an application for leave (the **first application**) which was withdrawn before Hon. Mteule, J. He then filed another application for leave (the **second application**) before Hon. Mgeyekwa, J. which was struck out. The applicant has now come to this court with an application for extension of time to file review (the **present application**).

It is the principle of law that in determining an application for extension of time, the court examines if the applicant has adduced sufficient reasons for the court to grant the application sought. The court must exercise its discretion in granting such an application judiciously. In the case of **Yusuf Same & Another vs. Hadija Yusufu, Civil Appeal No. 01 of 2002 (CAT-DSM)** (unreported) the Court of Appeal stated:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to "sufficient cause" has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any

or valid explanation for the delay; lack of diligence on the part of the applicant".

In the present application the main reason for the delay is sickness of the applicant and "*technical delay*" as averred by Counsel for the applicant. I have gone through the affidavit of the applicant, paragraphs 10 and 11 state the sickness of the applicant that he was on 24/06/2021 continuing to attend clinic and when he got improvement on 27/09/2021 he instructed Mr. Ogunde to represent him in the second application. According to **Annexure D** to the affidavit, the applicant has been on constant treatment in various hospitals since 2017. The most recent medical reports are from CCBRT dated 16/06/2021 before the withdrawal of the first application and 11/08/2021 after the withdrawal, where it is reflected that he attended the hospital on **16/07/2021** and surgery was done. It appears that despite that the applicant has been continually sick but that has not hindered him from doing his court work. For instance, he was sick in 2017, 2018, 2019 and 2021 but still he could file notice of appeal and application for leave and the like and he could still instruct lawyers. When the first application was withdrawn, he was already in treatment in CCBRT and that did not bar him from instructing Mr. Tembo, Advocate to withdraw the application. In any case, the issue of sickness cannot stand as sufficient reason because all along the applicant has been sick, and he has managed to continue with court

matters and there is no medical proof that he has been admitted after the first application to warrant reasons for delay for the filing of the application for review.

As for "*technical delay*" Mr. Ogunde stated that the second application was filed on belief that an order for withdrawal with leave to refile was granted, so the applicant filed the second application instead of an application for review. In my considered view, the decision by the applicant and his advocate to prosecute a second application believing it to be the proper application which resulted to being unsuccessful cannot be termed a "*technical delay*". That is negligence. It would have been "*technical delay*" if the application for review was filed within time, but due to problems a fresh application had to be instituted necessitating the grant of extension of time. But in the present case the applicant did not file an application for review within time, he apparently filed a second application for leave to appeal after withdrawal of the previous one; and after failing she has now decided to take the review route. The alleged "*technical delay*" cannot therefore stand where the initial course of action taken was a mistake. (see the case of **Fortunatus Masha vs. William Shija & Another [1997] TLR 154**). In any case, if the court allows a mistake in the

procedure to be termed "*technical delay*" then there would be no end to litigation.

Mr. Lyimo argued that the applicant and his advocate were negligent. I agree with him because the applicant was represented by Mr. Tembo when the matter was withdrawn, and he was represented by Mr. Ogunde when he took over and filed the second application for leave. Practice has it that when taking over a case, a thorough perusal of the file has to be done so as to plan the next course of action. It appears Mr Ogunde did not find it necessary to do so hence the filing of the second application for leave which in my view was a wrong course of action. It has been said times and again that ignorance of law or negligence (in terms of belief that leave to refile was also granted) cannot be a good and sufficient reason for grant of extension of time (see the case of **Omari R. Ibrahim vs. Ndege Commercial Services Limited, Civil Application No. 83/01 of 2020 (CAT-DSM)** (unreported)).

For the reasons I have endeavored to establish it is obvious that the applicant has failed to establish sufficient reasons to warrant the court to exercise its discretionary powers to grant extension of time within

which to file a Notice of Appeal to the Court of Appeal. Subsequently, the application is hereby dismissed. There shall be no order as to costs.



A handwritten signature in blue ink, appearing to read "V.L. Makani".

V.L. MAKANI
JUDGE
31/10/2022