

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

**MISC. LAND APPLICATION NO.136 OF 2022**

(Arising from Land Case No.292 of 2016)

**REV. PETER PETER JUNIOR.....APPLICANT**

**VERSUS**

**BAKARI SHABANI MAKAMBA** (An Administrator of  
DICKSON SHABANI MAKAMBA).....**1<sup>ST</sup> RESPONDENT**  
**TIGO TANZANIA LIMITED**.....**2<sup>ND</sup> RESPONDENT**  
**AIRTEL TANZANIA LIMITED**.....**3<sup>RD</sup> RESPONDENT**  
**HUSSEIN ALLY SALUM**.....**4<sup>TH</sup> RESPONDENT**

Date of Last Order: 30.08.2022  
Date of Ruling: 17.10.2022

**RULING**

**V.L. MAKANI, J**

This is an application by REV. PETER PETER JUNIOR as Administrator of the late Dickson Shabani Makamba. He is praying for enlargement of time within which to file application to set aside the dismissal Order in Land Case No. 292 of 2016 dated 07/06/2017 (Hon. Mzuna, J), after expiration of the of the previous order granted in Misc. Land Application No. 541 of 2019 (Hon. Maghimbi, J).

The application is made under section 93 of the Civil Procedure Code, CAP 33 RE 2019 (the CPC) and it is supported by the affidavit of the applicant herein. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filed their counter-affidavits to oppose the application. The 2<sup>nd</sup> respondent did not enter appearance, so the matter proceeded in her absence.

Hearing proceeded orally. The applicant defended for himself. He adopted the contents of his affidavit. He said he had previously filed applications to extend time but they were struck out because of technicalities. He said after the striking out of Misc. Application No. 756 of 2021 (Hon. Mgeyekwa, J) he was busy looking for a lawyer and he used 14 days until the filing of this application. He said the application was struck out on 15/03/2022 and this application was filed on 31/03/2022. He said he is praying for enlargement of time so that he can restore the main case, that is, Land Case No. 292 of 2016. He said he is not claiming for costs.

Mr. Adrian Mhina appeared for the 1<sup>st</sup> respondent, and he adopted the contents of his counter-affidavit. He said the applicant prayed to adopt paragraphs 1 to 7 only of his affidavit which is historical and does not touch on the reasons for the delay which is the technical

delay. he said it is not in dispute that the applicant was granted extension of time on 26/10/2020 for 30 days vide Misc. Land Application No. 541 of 2019. He said the applicant was supposed to tell us what happened within this time. He said according to Order XLIII Rule 2 of the CPC the applicant has decided not to adopt paragraphs 8,9 and 10 of his affidavit which has prayers. He said section 93 has not been satisfied.

Mr. Mhina further said he delayed for 15 days after the last decision before Hon. Mgeyekwa but did not account for the delay in terms of the case of **Daudi Haga vs. Jenitha Abdon Machagfu, Civil Reference No. 1 of 2000 (CAT-Mwanza)**(unreported). He said the application was filed by the applicant himself and not an Advocate and it was filed on 31/03/2022 but was sworn on 24/03/2022. He said there is a gap of the dates which have not been accounted for and so the principle of accounting for the days has not been satisfied considering that nothing has been done by an Advocate as alleged by the applicant. Mr. Mhina said section 93 of the CPC is based on judicial discretion. He said enlargement of time happens after a person not using time that was extended and the basis is for the applicant to give sufficient reasons. He said the previous applications were struck out

because the applicant did not comply with the law and that is not sufficient reason for the grant of enlargement of time. He said ignorance of the law is not an excuse since it was the applicant who lost time by bringing applications which did not comply with the law. And he did not make the error once but twice. He said in brief, since the applicant did not adopt the crucial paragraphs in his affidavit, he breached Order XLII Rule 2 of the CPC. Secondly the applicant has failed to account for each and every day of the delay, and thirdly no sufficient reason has been advanced to warrant the extension. He prayed for dismissal of the application with costs.

Mr. Swedi Ismail, Advocate appeared for the 3<sup>rd</sup> respondent said the applicant has failed to account for each day of the delay. He said the applicant has said he was delayed for 15 days after his application being struck out and he was delayed because he was looking for an advocate. He however said the application has been drawn and filed by the applicant himself and he has not justified the 15 days delay. He said the affidavit was taken on 24/93/2022, so on that day he had the application but decided not to file it. He said there is no proof of what was done in the days of the delay. He said on the claim that the application was struck out because it was incompetent is not an issue

with the respondents because they are not supposed to tell him what to bring to court and ignorance of law is not a defence. He said the reasons given by the applicant are not sufficient, but they are questionable. He prayed for the application to be dismissed with costs.

The fourth respondent did not have anything to say he adopted the contents of his affidavit.

In rejoinder, the applicant said he did not mean to forgo paragraphs 1 to 7 of his affidavit, but he did not mean to explain about them that is why he explained about the remaining paragraphs and has given reasons for the delay. He said the applications were struck out not dismissed so he had the right to file another application and give reasons thereto. He said there was an advocate who assisted him to register electronically before payments were made physically. He said this called for the delay of 15 days. He prayed for the application to be granted.

Having heard the parties and Counsel herein the main issue for consideration is whether the application before this court has merit.

Before determining the substantive issues in the application, I wish to address the issue raised by Mr. Mhina that the applicant did not adopt the last three paragraphs hence section 93 and Order XLIII of the CPC were not satisfied. With due respect, adoption of the contents of an affidavit means that the applicant did not want to repeat the contents of paragraphs 1 to 7 of the affidavit which I have noted they are historical. The applicant submitted orally on the reasons for the delay which are encompassed in the remaining paragraphs. So, in my view, the omission of not adopting the other paragraphs is not fatal.

Now coming to the main issue. In enlargement of time, as is with extension of time, the established principle of law is that the determination of such an application is based on the discretion of the court. However, that discretion must be exercised judicially by considering whether the applicant has given sufficient reason to account for the delay.

In this application the main reason for the delay in filing the application is found in paragraphs 8 to 10 of the applicant's affidavit.

The applicant explained that it was not out of negligence, but it was rather a technical delay. According to him the delay was because the applicant was looking for a lawyer to assist him to file the case electronically. On the part of the respondents, they maintained that the application having been drawn and filed by the applicant personally, the issue of a lawyer does not arise and what remains is that the applicant has not accounted for the 14 days of delay after the last application (Misc. Application No. 756 of 2021 before Hon. Mgeyekwa, J) was struck out.

The affidavit and submissions by the applicant are not clear as to the reasons for the delay. The applicant said for 14 days he was looking for a lawyer to assist to file the application electronically. However, this fact is not in the affidavit, and it is not clear why the said filing should take 14 days to be effected. And if at all there was an input by a lawyer, then there would have been an affidavit from the said lawyer to ascertain this fact. As said by Counsel for the respondents, and correctly in my view, the affidavit was signed on 24/03/2022 but no reasons have been advanced as to why it was filed on 31/03/2022 that is 7 days later. Failure to give sufficient reasons and account for the delay is fatal for such applications

For the reasons advanced hereinabove, the application is dismissed with costs for want of merit.

It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**17/10/2022**