

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. APPLICATION NO. 262 OF 2021

*(Arising from Misc. Land Application No. 425 of 2020)*

SAFI MSAFIRI MTUMBI @ MAMA SIMBA.....APPLICANT

VERSUS

EVANS FRANK.....1<sup>ST</sup> RESPONDENT

HAMIS KASSIMU RAMADHANI.....2<sup>ND</sup> RESPONDENT

RAMADHANI KASSIMU YUSUFU.....3<sup>RD</sup> RESPONDENT

*18/5/2022 & 31/5/2022*

**RULING**

**A. MSAFIRI, J.**

On the 2<sup>nd</sup> day of June 2021, the applicant lodged an application in this Court by way of chamber summons under Sections 14 of the Law of Limitation Act [CAP 89 R.E 2019] and 95 of the Civil Procedure Code [CAP 33 R.E 2019], for the following orders;

- i. That the applicant be granted an order for extension of time to set aside dismissal order in respect of Miscellaneous Application No.*

*Aelle*

*425 of 2021 delivered on the 10<sup>th</sup> November 2020 before Hon. Judge S. M. Maghimbi.*

- ii. *Any other reliefs as the Honourable Court may deem fit and just to grant in the premises hereof.*
- iii. *Costs of the Application.*

The application is taken at the instance of the applicant and it is supported by an affidavit affirmed by the applicant herself.

On 16<sup>th</sup> March 2022, this Court ordered the application be disposed of by way of written submissions, the order which was duly complied by the parties. However it is only the 1<sup>st</sup> respondent who lodged the reply submission because the 3<sup>rd</sup> respondent conceded to the application but as to the 2<sup>nd</sup> respondent the matter abated as he passed away and no administrator of the deceased estate was appointed.

Before going to the merits or otherwise of the present application, a brief background giving rise to the present application is necessary. On 14<sup>th</sup> August 2015, the 1<sup>st</sup> respondent instituted Land Case No. 292 of 2015 against the applicant, 2<sup>nd</sup> and 3<sup>rd</sup> respondents claiming against them jointly and severally for reliefs *inter alia* payment of TZS 149,280,000.00 for breach of tenancy agreement. *Acde.*

It was alleged that, on 1<sup>st</sup> January 2013, the 1<sup>st</sup> respondent entered into 2 years lease agreement with the 2<sup>nd</sup> and 3<sup>rd</sup> respondents for lease of a stall in house on Plot No. 9 Block 14 Pemba Street, Kariakoo area, within the city of Dar es Salaam. The lease agreement was to expire on 1<sup>st</sup> January 2015. The payable rent was TZS 160,000/= monthly hence for the period of two years the 1<sup>st</sup> respondent paid a sum of TZS 3, 840,000/=.

It is further alleged that, sometimes in February 2014 while the 1<sup>st</sup> respondent was away, the applicant broke in and opened the locks of the demised premises and removed some cosmetic products and later locked the premises with her own padlocks.

The 1<sup>st</sup> respondent reported the matter to the police in which it was discovered that the applicant had also a lease agreement on the same premises having leased the same from 2<sup>nd</sup> and 3<sup>rd</sup> respondents. This prompted the 1<sup>st</sup> respondent to institute in this court a case against the applicant and 2<sup>nd</sup> and 3<sup>rd</sup> respondents. At the hearing of the matter the applicant did not enter appearance hence the matter proceeded *ex parte* against her and after full hearing, the Court entered judgment and decree in favour of the 1<sup>st</sup> respondent for the payment of TZS 13,650,000.00 for

*Allie*

loss of profit while the applicant was ordered to pay a sum of TZS 35,630,000.00/= being the value of the damaged cosmetics.

After delivery of the judgment, when the 1<sup>st</sup> respondent sought to execute the decree, the applicant lodged in this Court Miscellaneous Application No. 425 of 2020 seeking for an order for extension of time to set aside the *ex parte* judgment but the said application was dismissed on 10<sup>th</sup> November 2020 for want of prosecution. Hence this application has been preferred by the applicant as an attempt to extend time to set aside the dismissal order in respect of Application No. 425 of 2020.

The reasons advanced by the applicant in her affidavit as well as written submission in support of the application are that she engaged Mr. Fredrick Charles advocate to handle her case and the said advocate assured the applicant everything was under control only to realize sometimes in May 2021 that her application was dismissed.

It is further contended by the applicant that when the Application No. 425 of 2020 was called on for hearing, she was at Kigoma attending her sick mother, hence she entrusted the matter in the hands of her advocate. *Aelle.*

The 1<sup>st</sup> respondent has countered the application by lodging in Court a counter affidavit as well as reply submission in which he contended that there is no sufficient reason advanced by the applicant to warrant the Court to exercise its discretion for extension of time because the applicant has not accounted for each day of the delay from 11/10/2020 when the Application No. 425 of 2020 was dismissed to 2<sup>nd</sup> June 2021 when the applicant lodged the present application. To fortify his point on the need to account on each day of the delay, the 1<sup>st</sup> respondent has cited the decision of the Court of Appeal in **Airtel Tanzania Limited v Misterlight Electrical Co. Limited and another** Civil Application No. 37/01 of 2020 (unreported).

Having gone through submission in support and rival to the application the issue which calls for the Court's determination is whether the application has merit.

It is trite law that in an application for extension of time to do a certain act, like in present one, in which the applicant seeks and order for extension of time to set aside dismissal order, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time. *Alle.*

There are numerous decisions of the Court of Appeal of Tanzania which emphasize that, before the Court can exercise its discretion for extension of time, the applicant is required to show good cause. See for instance **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).

However, what constitutes good cause has not been codified although a number of factors to be considered are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant. (See for instance the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001, **Tauka Theodory Ferdinand v. Eva Zakayo Mwita (As Administratrix of the Estate of the Late Aibanus Mwita)** and **Wambura NJ. Waryuba v. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 225/01 of 2019 (all unreported).

It is not in dispute that, in the present application, the application which the applicant seeks to restore was dismissed on 10<sup>th</sup> November 2020 while the present application for extension of time was lodged on 2<sup>nd</sup> June 2021.

*Atlls*

It follows therefore that, almost **204 days lapsed**. Hence the applicant is duty bound to adduce sufficient reasons and also account on each day of the delay.

It is settled law that in an application for extension of time to do an act, the applicant is supposed to account for each day of delay. See for instance **Ludger Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 and **Mpoki Lutengano Mwakabuta v. Jane Jonathan** (*As Legal Representative of the Late Simon Mperasoka-Deceased*), Civil Application No. 566/01 of 2018 (both unreported). For instance, in the former case the Court stated thus:

*"It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application"*

As to whether the applicant has advanced sufficient reason, in the present application the applicant has not been able to discharge this duty as in her affidavit, the applicant wanted to shift the blame to her advocate as the cause for failure to lodge the application in time. This is the sole reason advanced by the applicant which has been vehemently opposed by *Alle*.

the 1<sup>st</sup> respondent. The contention by the applicant that she entrusted her advocate namely Fredrick Charles to handle the matter but the said advocate did not take proper steps cannot be sufficient reason for extension of time.

Times and again advocate's negligence has never been sufficient ground for extension of time. See for instance the decisions of the Court of Appeal in **Paul Martin v Bertha Anderson** Civil Application No. 7 of 2005 Court of Appeal of Tanzania at Arusha (unreported) and **Maulid Hussein v Abdallah Juma** Misc. Civil Application No. 20 of 1988 (unreported) in which the Court of Appeal reiterated its stance that negligence of the advocate is not a sufficient reason for extension of time.

As to whether the applicant has been able to account on each day of the delay, as stated before, almost over **204 days** had lapsed, the applicant was required to strictly account on each day of the delay. But the applicant has not been able to discharge this obligation. Failure to account on each day of the delay would result to the application be dismissed as it was pointed out in the case of **Ludger Bernard Nyoni v. National Housing Corporation** [supra].

*Alls.*



In upshot and for the foregoing I hold that the application lacks merits and it is hereby dismissed with costs.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written in a cursive style and is positioned above a horizontal dotted line.

**A. MSAFIRI,  
JUDGE  
31/5/2022**