

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 496 OF 2021

(Arising from Judgment and decree in Land Case No. 441 of 2017 Hon. S. M. Kalunde, J. dated 25th June, 2021)

MARIAM CHISTOPHER.....APPLICANT

VERSUS

EQUITY BANK TANZANIA LIMITED..... 1ST RESPONDENT


CHRISTOPHER MAKINDI EDWARD LIMITED.....2ND RESPONDENT

18/7/2022 & 26/7/2022

RULING

A. MSAFIRI, J.

On the 16th day of December 2021, the applicant lodged an application in this Court by way of chamber summons under Section 95 of the Civil Procedure Code [CAP 33 R.E 2019] and Section 14 of the Law of Limitation Act [CAP 89 R.E 2019], for the following orders;

- i. *That this Honourable Court be pleased to grant extension of time of limitation for the applicant to file review against the decision of Honourable S. M. Kalunde Judge on Land Case No. 441 of 2017 delivered on 25th June 2021.* 

- ii. *Any other relief or order that this Honourable Court may deem fit and just to grant.*

The application is supported by an affidavit sworn by the applicant herein. Mr. Peter Shapa and David Chillo learned advocates represented the applicant and the 1st respondent respectively. On the other hand the 2nd respondent did not enter appearance so the hearing was heard ex-parte against him.

It is gathered from the record of this application that, the 2nd respondent, the applicant's husband had applied for and was granted a credit facility by the 1st respondent at the tune of Tsh 100,000,000/= payable within 30 months at equal monthly installments of Tsh 4,413,994/=. The said credit facility was secured by a landed property on Plot No. 867 with certificate of title No. 90591 Block D Mbagala area Temeke Municipality in Dar es Salaam.

The 2nd respondent did not honour the terms and conditions of the loan as he failed to service it as required. This prompted the 1st respondent to issue 60 days default statutory notice. Still the 2nd respondent did not honour his obligations to pay the outstanding amount. Therefore, the 1st *Adls.*

respondent moved to auction the mortgaged property described above so as to recover the outstanding amount.

The applicant instituted Land Case No. 441 of 2017 against the respondents who were 1st and 2nd defendants respectively. The applicant was claiming for reliefs *inter alia* for an order to declare that the applicant has lawful interest in the mortgaged property.

Having heard the parties, the Court dismissed the applicant's case for lack of merits. Hence the applicant intends to have the judgment reviewed. But because she could not lodge the application for review timely for the reasons to be revealed shortly, she preferred the present application for extension of time.

In both the affidavit and written submission by the applicant, two reasons have been advanced by the applicant that prevented her from lodging the application in time. The first reason is that the applicant stated that she suffered from serious mental trauma since the delivery of the judgment and second reason is financial hardship on the part of the applicant to afford an advocate.

The applicant submitted that those reasons are sufficient for this Court to exercise its discretion for extension of time. Reference was made

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to the decision of **Wambele Mtumwa Shahame v Mohamed Hamis** Civil Reference No. 8 of 2016 Court of Appeal of Tanzania at Dar es Salaam (unreported) in which the Court may extend time upon good cause shown.

On the other hand the 1st respondent forcefully opposed the application in both the counter affidavit and written submission. The 1st respondent maintained that the applicant has not advanced any sufficient reason to warrant the court to exercise its discretion for extension of time.

On the issue of the applicant suffering from serious mental trauma and stress which prevented her from filing the application in time, the 1st respondent contended that there is no proof in form of medical certificate from the doctor who attended the applicant and proof that she was exempted from duty.

To fortify this point the 1st respondent has referred to me the decision of this Court in **Numerian Francis v Benedicto Kamugisha**, Misc. Land Appeal No. 57 of 2021 (unreported) in which the Court while referring to the decision of the Court of Appeal in **Kapapa Kumpindi v The Plant Manager Tanzania Breweries**, Civil Application No. 2 of 2010 in which it succinctly stated that sickness or illness becomes a ground

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for extension of time only when it is proved that indeed it is the sickness that caused the delay.

On the other reason of financial difficult on the part of the applicant, the 1st respondent contended that, that does not amount to sufficient reasons. To fortify its stance, the 1st respondent has referred to me several decisions including **Bi. Nunugha Gewe v Parmi Daniel Gobre**, Misc. Civil Application No. 55 of 2020 and **Yosuph Same & another v Hadija Yusufu**, Civil Appeal No. 1 of 2002 Court of Appeal (both unreported). In both decisions financial constraint was held not to be a sufficient reason for extension of time.

On rejoinder submission the applicant essentially reiterated her submission in chief. On the issue of not providing any proof of sickness the applicant contended that she had no money to attend medical treatment but she attended divine prayers to God in one church in which no medical certificates are issued.

Having gone through the submissions of the parties, rival and in support of the application the issue which calls for the Court's determination is whether the application has merit. *Adde*

Parties to the present application are at one with the requirements to show sufficient reasons for application of extension of time like the present one. However what parties are in disagreement with are the reasons advanced by the applicant. It is trite law that in an application for extension of time to do a certain act, like in present one, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time.

There are decisions both of this Court as well as the Court of Appeal of Tanzania which require good cause to be shown before the Court can exercise its powers for extension of time, are; **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).

In the instant application as stated before there are two reasons which have been advanced by the applicant in her attempt to have the court decide in her favour. I will start with the issue of medical complications the applicant claimed to have encountered immediately after the pronouncement of the judgment sought to be reviewed. Rightly as submitted by the 1st respondent together with the authorities referred, *Acts.*


sickness is a valid reason for extension of time only if it is proved that it is the sickness which caused the delay. In the present matter, there is nothing tangible to establish that the applicant was sick. Issues of being under deep mind trauma to the extent of not knowing what goes on as stated by the applicant ought to have been proved by medical documents.

There is no any evidence of medical treatment shown by the applicant to prove that she was in such a situation. The applicant contended that she was totally frustrated to the extent of being taken care of by her neighbours however there is no any affidavit sworn by any of the applicant's neighbors to substantiate the applicant's claims. Similarly the applicant stated that she was taken for prayers in a certain church but she could not mention the said church and on what dates she attended the prayers.

Sickness is a ground for extension of time but the same should be proved and shown that indeed it had bearing with failure to do the act required in time. In the present matter I hold that the applicant has failed to prove how the medical complications she referred to had bearing with the failure to lodge the application in time. *Alls.*

Regarding the contention that the applicant was financially incapacitated, I find this ground to have no bearing with the applicant's failure in lodging the application in time. I state so because in the present application the applicant not only paid the requisite fee as evidenced by the exchequer receipt No. 25015549 but also she engaged an advocate Mr. Peter Shapa. Now if truly the applicant was financially incapacitated she had an option to seek waiver to pay the required filing fee or to seek legal aid.

Now as the ground has been raised by the applicant, she ought to have adduced more evidence in her affidavit to state how much amount of money she needed for her to lodge the application in time and how she was able to secure the filing fee and also to engage Mr. Shapa in order for the Court to exercise its discretion.

Moreover, 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). As 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"

In the present application the applicant was bound to strictly account for each day of delay. The 1st respondent contended about **84 days** lapsed. Hence the applicant was required to account on each day of the delay but she has not been able to discharge this duty as in her affidavit the applicant has not stated what happened on each day of the delay.

It is for the foregoing reasons that I hold the application to have no merits and it is hereby dismissed with costs.

It is so ordered.



A. Msafiri

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A. MSAFIRI,
JUDGE
26/7/2022