

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)

**MISC. LAND APPLICATION No.101 OF 2022**

*(Arising from Order in the Misc. Land Application No.170 of 2021 in  
high court of Tanzania Land Division dated 29<sup>th</sup> April, 2021)*

AMINA RASHID..... APPLICANT

**VERSUS**

HASHIMU RAMADHANI SELEMANI.....1<sup>ST</sup> RESPONDENT

JUMA RAMADHANI.....2<sup>ND</sup> RESPONDENT

CHOKI RAMADHANI SELEMANI.....3<sup>RD</sup> RESPONDENT

JUTIA RAMADHANI SELEMANI.....4<sup>TH</sup> RESPONDENT

*11/5/2022 & 06/7/2022*

**RULING**

**B.S. MASOUD, J;**

The Application at hand traces its origin from the Applicant's application No. 170 of 2021 which was dismissed on 29/4/2021 for want of prosecution. In the said Application the Applicant was seeking an order to set aside the dismissal order in Land Appeal No. 60 of 2017 which was also dismissed by this court for want of prosecution.

The Application is brought under the provision of Section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2019 (The Limitation Act). It is supported by the Applicant's affidavit dated 3<sup>rd</sup> March, 2022. Opposing the Application, the Respondents filed a joint counter affidavit sworn by their advocate, one Bitaho B. Marco dated 21<sup>st</sup> April, 2022.

With leave of the court, the hearing proceeded by way of filing written submissions. Both parties were represented, while the Applicant was represented by Anthony Fissoo, Advocate from ABC SLOAT Legal Aid Organisation, the Respondents were represented by Bitaho B. Marco, Advocate.

Submitting in support of the application, the Applicant said that failure to file an application for setting aside the dismissal order in time was due to the advocate's negligence. Her old age as she is over 60 years and health problem she is experiencing meant that she was not in a position to enter appearance before the court or make regular follow ups on the progress of her case. She therefore entrusted her case solely to her advocate, Mr. Lesindamu, who as well never entered appearance. As a result the application was dismissed.

She became aware of the dismissal order when her previous advocate Lesindamu withdrew from representing her (due to sickness and lack of instruction), while the Misc. Land Application No.170 of 2021 was dismissed on 29/04/2021.

Therefore she should not be blamed on the negligence committed by her Advocate. She added, that much time was wasted in seeking another Advocate. Mr. Anthony said further that the delay was also contributed

by the delay of the court in rectifying an error on the ruling dismissing land Appeal No. 60 of 2017 which was erroneously dated 16/05/2016 instead of 16/5/2019.

When replying, Mr. Bitaho started his submission by praying to the court to adopt the respondent's counter affidavit to form part of his submission. He added that the Applicant did not adduce any sufficient reason warranting this court to grant the application. Therefore, he invited the court to dismiss the application with costs.

Having heard the parties' submissions, my duty is to determine whether the Application before me has merits on account of reasons adduced.

Supporting the application Mr. Anthony submitted that the main reasons for the Applicant's delay was due to negligence of her previous advocate, and his failure to enter appearance in court. Mr. Anthony said that taking into account of the Applicant's old age, and healthy issues she is facing, she was unable to attend court sessions. Therefore, she relied solely on her advocate. The Applicant did not however attach any evidence proving her assertion that she was medically unstable. One would have expected her to attach medical report to support what was submitted by Mr. Anthony but she did do so not in her affidavit. Thus, this reason lacks substance.

Another reason for delay was that the court delayed in rectifying the mistakes discovered in the copy of the Order of Land Appeal No. 60 of 2017 despite several follow-ups. It was not clear how the mistakes in the order mentioned above hindered the Applicant from filing in time, the application for setting aside the dismissal order in Misc. Land Application No170 of 2021, while previously, she successful filed Misc. Land Application No.631 of 2022 for extension of time to file application for restoration of the Appeal out of time, followed by Application No. 170 of 2021 intending to set aside the dismissal order dated 16/05/2017. I am in agreement with Mr. Bitaho that the anomaly in the said Order did not in any way prevent the Applicant from pursuing her application on time.

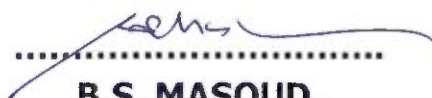
The records reveal that, the Misc. Land Application No. 170 of 2021 was dismissed on the 29/04/2021. According to the provision of **Item 4 of part III of the Law of Limitation Act, Cap 89 R.E2019**, Application to set aside the dismissal order is supposed to be filed within 30 days from the date of the dismissal, but the application at hand was filed on the 10/03/2022, after the lapse of 285 days, (as her 30 days expired on 29/05/2021). All these days are unaccounted for in the applicant's affidavit. This shows that at all material time, of about ten to eleven months, the applicant did sleep on her right.

Moreover, she has failed to account for the days she delayed to take appropriate action. Therefore, the application goes against the principles laid down in the famous case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010(CAT)** (unreported), where it was stressed that the applicant must account for all the period of delay.

On those observations and findings, it is obvious that the applicant has failed to adduce sufficient reasons for the delay to warrant the discretion of this court to extend time.

In the results, the application is dismissed without costs as the applicant was on legal aid. Ordered accordingly.

Dated at Dar es Salaam this 6<sup>th</sup> day of July, 2022.



**B.S. MASOUD.**  
**JUDGE.**

