

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 593 OF 2021

(Arising from decision of the High Court Land Division at Dar es Salaam Hon. S. M. Kalunde, J. dated 5th March, 2020 in Misc. Land Application No. 330 of 2019)

NAHLA DEVELOPMENT LIMITED.....APPLICANT

VERSUS

REGISTERED TRUSTEES OF SUDAN BUILDING

MATERIALS CO-OPERATIVE SOCIETY.....1ST RESPONDENT

REGISTERED TRUSTEES OF MAPAMBANO BUILDING


MATERIAL CO-OPERATIVE SOCIETY.....2ND RESPONDENT

Date of last order: 10/8/2022

Date of ruling: 12/8/2022

RULING

A. MSAFIRI, J.

On the 28th day of October 2021, the applicant lodged an application in this Court by way of chamber summons under Section 14 of the Law of Limitation Act of the Law of Limitation Act [CAP 89 R.E 2019], for the following orders; 

- i. *That this Honourable Court be pleased to extend time of time of limitation to enable the Applicant herein present for filing bill of costs out of time in respect of the ruling dated 5th March 2020, Hon. S. M. Kalunde, Judge and the matter be heard and determined on merits.*
- ii. *Costs of this application be provided.*
- iii. *Any other relief(s) this Honourable Court deems fit and equitable to grant.*

The application is supported by an affidavit affirmed by Mr. Youssef Malek Jaber, the Principal Officer of the applicant herein. Messrs Castor Rweikiza and Amin Mshana learned advocates represented the applicant and the respondents respectively.

On 5th July 2022 this Court ordered the application to be disposed of by way of written submissions. The Court set a schedule for the filing of written submission in chief whereas the applicant was to be filed by 18th July 2022 and the respondents were required to lodge in Court their reply written submissions on or before 28th July 2022. The applicant complied with the Court's schedule order but respondents did not file the reply.

submission. Hence the application will be determined basing on the applicant's submission only.

The applicant having adopted the affidavit in support of the application urged the Court to grant the application because there are sufficient reasons shown as required for application for extension of time.

According to the applicant, failure to file the application for bill of costs in time was attributed by two reasons. First is that Mr. Youssef Malek Jaber who is the majority shareholder as well as the managing director of the applicant had been frequently travelling outside the county for business purposes as well as for medical attention the fact which made the communication between him and his lawyers to be difficult leading to applicant's failure to present the bill of costs in time.

Several countries have been mentioned in which the aforementioned managing director was visiting. It is submitted further that on 3rd May 2020, the Managing Director was in Ivory Coast until 28th September 2020 when he returned and again left for Rwanda on 15th November 2020 to 22nd November 2020. It was contended that from 23rd December 2020 up to 30th December 2020 he was in United Arab Emirates. *Alle*

The second reason advanced by the applicant for failure to file the bill of costs in time was caused by its advocate who was attending his sick relatives who were seriously sick and some of whom passed away. Those passed away were Dr. Peter Msola who passed away on 23rd October 2021, the advocate's wife's grandmother who passed away on 15th October 2021. It has been contended that the advocate's grandmother one Paulina Rwabugilwa passed away on 20th September 2021. Several bus tickets have been annexed to the affidavit showing different dates in which the applicant's advocate travelled.

The applicant has referred to me several decisions to fortify his stance. In **Sadru Mangalji v Abdul Aziz Lalani and others**, Misc. Commercial Application No. 126 of 2016 it was held that it is better the cases be determined on merits and that illness should be considered as a factor for extension of time.

Having gone through the applicant's submission in support of the application the issue which calls for the Court's determination is whether the application has merits.

It is on record that this Court dismissed Misc. Application No. 330 of 2019 on 5/3/2020 with costs in favour of the applicant after the

respondents' nonappearance when the matter was called on for hearing. Hence the applicant ought to have lodged the bill of costs within sixty (60) days from 5/3/2020 i.e. on or before 4/5/2020. The applicant did not file the bill of costs in time hence he preferred the present application for extension of time for the reasons stated above.

Before determining whether the reasons for the delay advanced by the applicant are valid, 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, See the case of **Loshilu Karaine & 3 others v Abraham Melkizedeck Kaaya (Suing as Legal personal representative of Gladness Kaaya)** Civil Application No. 140/02 of 2018, Court of Appeal of Tanzania at Arusha (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 attention as well as journeys made by the managing director of the applicant. I have closely gone through the affidavit in support of the application, there is no any proof that suggests that the managing director for the applicant.

Alle.

travelled on 3rd May 2020 to Ivory Coast and returned on 28th September 2020. No tickets have been attached to prove that indeed the Managing Director had travelled in those days. Equally no tickets have been produced to establish that the said Director had travelled to the United Arab Emirates on 23rd December 2020 to 30th December 2020.

On the issue of sickness claimed by the managing director for the applicant I have gone through the affidavit and found two documents which shows that Youssef Malek Jaber attended for medical checkup for the first time on 26/2/2020 as well as 15/7/2021. Now taking into account the first time the said managing director went for medical checkup i.e. on 26/2/2020 to the second time i.e. 15/7/2021, more than a year has passed. It is further discerned that on 26/2/2020 when the Director had gone for the medical checkup, was before the Order dismissing the Application No. 330 of 2019 was issued. Hence it can be said without hesitation from the time when the order was passed that is on 3/5/2020 the applicant went for medical checkup once, that is 15/7/2021.

I agree with the applicant that illness is a valid ground for extension of time. But for illness to be a valid ground for extension of time, it must be shown that illness had bearing with failure to do the required act in time

Ally

(See **Sabena Technics Limited v Michael J Luwungu** Civil Application No. 451/18 of 2020 (unreported). In the present matter if illness has to be taken to have caused the delay, the applicant has not said anything on what happened from 3/5/2020 when the order was passed to 15/7/2021 when he went for the said medical checkup. Similarly from 15/7/2021 to 28/10/2021 when the present application was lodged, it has not been indicated whether the said Managing Director was still sick.

Going by the applicant's submission from 14th July 2021 to 29th September 2021 the Managing Director was in Lebanon whether he was attending medical checkup for all that period or not it is not known since it is only indicated that the date of checkup was only on 15/7/2021. It was not established whether he was hospitalized all that long and when he was discharged. The applicant should have strictly accounted for each day between the said dates.

Consequently there is no clear proof that the Managing Director truly travelled or was under medical attention which would have a direct bearing with the failure to lodge the application in time.

Let me now turn to consider the claims that the advocate for the applicant was attending sick relatives and some of them died. First of all, *Allo-*

there is no supplementary affidavit from the learned advocate for the applicant Mr. Castor Rweikiza to substantiate what has been claimed in the affidavit affirmed by Mr. Youssef Malek Jaber. I am of the settled mind that as there was information obtained from the said advocate, he ought to have sworn supplementary affidavit to substantiate what was stated in the affidavit by the Managing Director of the applicant. Failure of which renders the claims that the advocate was attending sick relatives and some passed away as hearsay.

However, I will say something regarding the claims by the learned advocate that he was attending sick relatives. Firstly, it has not been clearly stated on which dates the learned advocate was attending sick relatives and on which hospital(s) if any. Instead a general statement has been made that the learned advocate was attending sick relatives. Moreover it has been shown that the learned advocate travelled several times for burial services and several bus tickets have been attached.

I have keenly checked the bus tickets attached on the affidavit in support of the application, the dates on which the learned advocate travelled were on 13/8/2020, 11/9/2020, 24/10/2010, 19/11/2020 and 10/2/2021. There is no any proof that shows the learned advocate

Alle.

travelled for burial ceremonies of his grandmother who died on 20th September 2021 and brother in law who passed away on 23rd October 2021 and his wife's grandmother who passed away on 15th October 2021, apart from a bus ticket of 10/2/2021. What happened to the said advocate from 3/5/2020 when the order was passed to 13/8/2020 when he travelled for the first time? Again from 10/2/2021 when he travelled for the last time to 28/10/2021 when he lodged the present application? The period has not been strictly accounted for.

For 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"

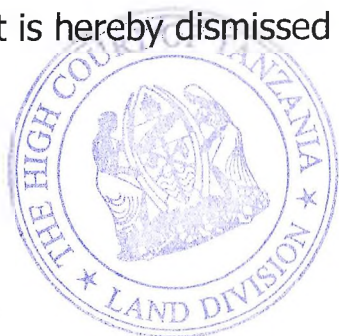
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In **Bushfire Hassan v Latina Lucia Masaya**, Civil Application No. 3 of 2007 (unreported) The Court of Appeal stated that;

Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

In the present application the applicant was bound to strictly account for each day of delay in the period stated above. The period of **one year and more than seven months** was required to be accounted for on each day of the delay but the applicant has not been able to discharge this duty in her affidavit or in the submission before the Court.

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



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal dotted line.

A. MSAFIRI,
JUDGE
12/8/2022