

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.94 OF 2023**

(Arising from Land Revision No. 19 of 2022 which was dismissed for want of prosecution by Hon. Khalifan, J on 22<sup>nd</sup> September 2022)

**MISOZI MGANGA** (Administratrix of the Estate of  
the late MGANGA LUGODA) ..... **APPLICANT**

**VERSUS**

**MUYA SEKONDO** (Administrator of the Estate of  
the late SEKONDO LUGODA) ..... **1<sup>ST</sup> RESPONDENT**

**HALIFA CHINAWA** ..... **2<sup>ND</sup> RESPONDENT**

**JUMA SALUM** ..... **3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of last Order: 24.03.2023*

*Date of Ruling: 24.03.2023*

**A.Z.MGEYEKWA, J**

This is an omnibus application whereas the applicant urged this court to exercise its discretion under section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] and Order IX Rule 6 (1) of the Civil Procedure Code Cap. 33

[R.E 2019] to extend the time for the applicant to file an application to set aside the dismissal order dated 22<sup>nd</sup> September 2022 and to set aside the dismissal order dated 22<sup>nd</sup> September 2022

The Application proceeded ex parte against the respondents who were duly being served to appear in court but opted not to show an appearance on the hearing date.

During the hearing of the application, the applicant had the legal service of Mr. Lutufyo Mumbavu, learned counsel.

When given the floor to argue his application, Mr. Lutufyo adopted the affidavit filed earlier in support of the application to be an integral part of his oral submissions. Having so done, he added that the applicant received the decision of the District Land and Housing Tribunal on 28<sup>th</sup> December 2022 thus, she found herself out of time to file a revision. Mr. Lutufyo stated that this is an omnibus application whereas the applicant is praying for an extension of time to set aside the dismissal Order dated 22<sup>nd</sup> September 2022 and in case the Court will grant this prayer, then the applicant prays this Court to set aside its order dated 22<sup>nd</sup> September 2022.

The learned counsel for the applicant submitted that the cited sections move this Court to grant an extension of time and such discretion be exercised

subject to the rules reasons and justice. To bolster his submission he cited the case of **Lyamuya Construction Ltd v Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). He continued to submit that the Court of Appeal has set guidelines to be considered before granting an application for an extension such as:-

- (i) The applicant must account for all the periods of delay
- (ii) The delay should be inordinate.
- (iii) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.
- (iv) If the court feels that their other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

The learned counsel continued to submit that to reconcile the said principles and reasons stated by the applicant; chronologically the applicant has accounted for the period of delay. He stated that on the date when the order was issued, the applicant fall sick and immediately after the weekend days on 26<sup>th</sup> September 2022, she appeared in court and wrote a letter requesting a copy of the dismissal order. Mr. Lutufyo submitted that the applicant made several follow-ups, and on 9<sup>th</sup> November 2022 she obtained the impugned

Order, hence started to engage an Advocate. He added that the counsel informed the applicant that she was out of time, but on 24<sup>th</sup> November 2022, she managed to file an Application. He added that on 26<sup>th</sup> January 2022, the said Application was struck out for being incompetent. On 30<sup>th</sup> January 2023, the applicant wrote a letter requesting for a copy of the impugned Ruling which he received on 15<sup>th</sup> January 2023. Mr. Lutufyo added that promptly, the applicant and managed to file the instant application. He insisted that the delay is not inordinate.

Regarding the second prayer, Mr. Lutufyo was brief and focused. He submitted that the applicant has stated good reasons for her non-appearance on the date when the matter was called for hearing. He submitted that the applicant in her affidavit stated that on the material date, she fell sick thus. She went to the hospital for checkup, she was diagnosis with malaria and UTI. To support his submission, Mr. Lutufyo referred this Court to a sick chic (Annexure A1). Mr. Lutufyo went on to submit that sickness is beyond human control, hence the applicant could not appear in court to move this Court to determine the matter.

On the strength of the above submission, the learned counsel for the applicant beckoned upon this Court to extend time and proceed to set aside the dismissal order.

From the learned counsel for the applicant's rival submission, this Court is called upon to determine whether a case has been made out to warrant this court to exercise its discretion and grant an extension of time and whether the applicant has adduced sufficient reasons to warrant this Court to set aside the dismissal order.

Starting with the first prayer of extension of time. The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

I preface my analysis by addressing one ground on which the learned counsel has raised in the course of his submissions. The sole ground for the extension of time is related to the account of days of delay. The applicant's Advocate argument is that they have accounted for each day of delay. The basis for the delay is stated as well in their affidavit that the applicant did not receive the copies within time.

The applicant in his affidavit has narrated in length how they found themselves out of time in filing an application for setting aside the dismissal order of this Court. From the date when the judgment of this court in respect

to Land Revision No. 19 of 2022 which was dismissed for want of prosecution in paragraphs 3, 4, 5, 6, and 7 of her affidavit, the applicant stated that on 22<sup>nd</sup> September 2022 by Hon. Khalifan, J. Then the applicant fall sick, to support her submission she attached a medical chic (Annexure A1). Thereafter, the applicant underwent medical treatment and she recovered on 26<sup>th</sup> September 2022. The applicant on the same date applied to be supplied with a copy of the Ruling and drawn order.

The applicant in paragraph 9 of her affidavit, stated that on 24<sup>th</sup> November 2022, she managed to file an application for an extension of time in Misc. Land Application No. 749 of 2022 to set aside the dismissal order, but the same was struck out on technical grounds, thereafter the applicant after weekend days on 30<sup>th</sup> January 2023 applied to be supplied with copies of drawn orders and received the same on 15<sup>th</sup> February 2023 hence he lodged the instant application on 28<sup>th</sup> February 2023.

Regarding the second prayer, to set aside the dismissal order, I have considered the learned counsel for the applicant's submission for the application. The issue which is the bone of contention in this Application, and on which the learned counsels for the parties have locked horns, is *whether*

*the applicant has adduced sufficient reasons to warrant this court to allow her application.*

It has been held by this court and the Court of Appeal of Tanzania time and again that in applications of this nature, an applicant seeking to set aside a dismissal order of the court that dismissed a suit for want of prosecution needs to furnish the court with sufficient reasons for non-appearance when the suit was called on for hearing.

It is evident from the affidavit supporting this application that the applicant's failure to appear before this Court when the matter was called on for hearing is because he fell sick. To support his allegations he has attached a hospital chic (annexure A2). I would like to make an observation that as amply submitted by the applicant's Advocate, he has convinced this Court to find that the applicant's delay was due to his Advocate sickness which is explicable and excusable as stated in the case of **John David Kashekya v The Attorney General**, Civil Application No. 107 of 2012 CAT (unreported).

The Court of Appeal of Tanzania held that: -

*"Sickness is a condition which is experienced by a person who is sick.*

*It is not a shared experience. Except for children which are yet in a position to express their feelings, it is the sick person who can express*

*his/her conditions whether he/she has the strength to move, work and do whatever kind of work he is required to do."*

I have also considered the fact that the respondent would neither be prejudiced nor suffer any irreparable injury by the grant of this application as it was held in the case **Jesse Kimani v Mc Cornel and another** [1966] EA 547.

In the upshot, I proceed to grant extension of time, and as well as to set aside the dismissal order in Land Revision No. 19 of 2020, the file is restored to the register for continuation from where it stopped when it was dismissed for want of prosecution. For the avoidance of doubt, the circumstances of this application are such that there should be no order to costs.

Order accordingly.

Dated at Dar es Salaam this date 24<sup>th</sup> March 2023.

A circular seal of the High Court of Tanzania, Land Division. The seal features a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF TANZANIA" and "LAND DIVISION".  
**A. Z. MGEYEKWA**  
**JUDGE**  
24.03.2023

Ruling delivered on 24<sup>th</sup> March 2023 in the presence of Mr. Lutufyo, learned counsel for the applicant.





<sup>XII</sup>  
A. ZIMGEYEKWA

**JUDGE**

24.03.2023