

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 570 OF 2022**

(Arising from the Judgment of the High Court – Land Division at Dar es Salaam in Land Application No. 482 of 2020)

**JOYCE WAMBURA.....APPLICANT**

**VERSUS**

**UPENDO PETER CHUWA.....RESPONDENT**

**R U L I N G**

*Date of last Order: 27/02 /2023*

*Date of Ruling: 04/04/2023*

**K. D. MHINA, J.**

The Applicant, Joyce Wambura, lodged this application by way of chamber summons, made under Section 14 (1) of the Law of Limitation Cap 89 R. E. 2019 (“the LLA”) and Section of the Civil Procedure Code [ Cap. 33 R. E. 2019] (“the CPC”)

The applicant is in pursuit of an extension of time within which to file an application to set aside a dismissal order in Misc. Land Application No. 482 of 2020, which was dismissed on 19 November 2021.

The chamber summons is supported by an affidavit, which expounds the grounds for the application sworn by Mr. Henry Mwangwala, who

represented the applicant under legal aid under the umbrella of Everlasting Legal Aid Foundation (E.L.A.F).

After being served with the application, the respondent confronted the application with the counter affidavit resisting the application. The counter affidavit was drawn and filed by Mr. Barnabas Luguwa Advocate.

Unfortunately, despite filing the counter-affidavit, the respondent never appears before the court despite being served. Therefore, the matter proceeded ex parte against her by way of written submission.

In support of the application, the applicant submitted that Misc. Land Application No. 482 of 2020 was before Hon. Kalunde. J, where it was ordered for the preliminary objection raised to be disposed of by way of written submissions.

On 30 August 2021, when she appeared to receive the Court Ruling, she was told by one of the Court servants that Hon Kalunde was transferred to Morogoro with all his case files.

She submitted that she then traveled to Morogoro, and when she inquired about Morogoro, she was informed that the case was not admitted at Morogoro.

On 9 September 2022, she inquired about the case, and she was told by one of the court servants that the application was dismissed for non-appearance.

Therefore, she submitted that she lost track of the case because of the wrong information from the Court servant.

Having considered the chamber summons and its supporting affidavit, and the written submission made by the learned counsel for the applicant, the issue that has to be resolved is whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to set aside dismissal order.

The Court of Appeal of Tanzania stressed this in **Omari R. Ibrahim vs. Ndege Commercial Services Ltd**, Civil Application No. 83/01 of 2020 (Tanzlii), where it put succinctly that in an application for an extension of time, good cause to extend must be shown.

As to what may constitute a good case, again, the Court of Appeal in **Hamis Babu Ally vs. The Judicial Officers Ethics Committee and three others, Civil Application No 130/01 of 2020 (TanZlii)**, pointed out the following factors: -

- i. To account for all period of delay*
- ii. The delay should not 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 and*
- iv. The existence of a point of law of sufficient importance, such as the illegality of the decision sought to be appealed against.*

In accounting for the period of delay, again, the Court of Appeal insisted that an applicant should account for each day of delay. In **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), it held that;

*"Delay of even a single day has to be accounted for otherwise  
There would be no point in having rules prescribing periods  
Within which certain steps have to be taken."*

Apart from the above, also in **Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambia [1999] TLR 182**, the Court of Appeal, established that illegality is sufficient ground to grant an extension of time.

I cited those cases as benchmarks to consider and test if the applicant passes the test by showing a good or sufficient cause considering that the **decision in which extension of time is sought was delivered on 19 November 2021, and this application was filed on 15 September 2022.**

In the application at hand, as I indicated earlier, the applicant has raised only one ground; she lost track of the case because of the wrong information she was given that the case was transferred to Morogoro, and when she went to Morogoro she found the case was not in the Morogoro Registry.

Having gone through the above-cited case laws and the argument advanced by the applicant, I am not persuaded by that argument as a good ground for extending time. My reasons are;

**One**, the applicant submitted that on 30 August 2021, after being told that the case was transferred to Morogoro, she traveled to Morogoro and

found the case was not there. Instead of making a follow-up again in the Registry, in which she filed the case, she remained "mute" until 9 September 2022.

**Two**, from 19 November 2021, when the application was dismissed, up to 15 September 2022, when this application was filed, is almost ten months (310 days), which is an inordinate delay.

**Three**, the applicant mentioned that a court servant informed her that the case was transferred to Morogoro, but she did not substantiate her claim by the affidavit of that court servant. Therefore, in the absence of an affidavit to substantiate her claim, then her allegations remain hearsay and unsubstantiated.

Four, the applicant failed to count for each day of delay. She just narrated the events of 30 August 2021 and her travel to Morogoro. In principle, she was supposed to account for each day of delay.

Flowing from above, it is; therefore, the ground raised by the applicant lacks merit. It fails to pass the benchmarks in the cited cases of **Omari R. Ibrahim, Hamis Babu Ally, Hassan Bushiri, and Devram Valambia**

(Supra). She has failed to show good cause to persuade this court to extend the time to file an application to set aside a dismissal order.

Therefore, I find no merit in this application. Consequently, I dismiss it with no order as to costs for the reason that the applicant was under legal aid and the application and written submission were filed in *forma pauperis*.

It is so ordered.



  
**K. D. MHINA**

**JUDGE**

**04/04/2023**