

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

**MISC. LAND APPLICATION NO. 659 OF 2022**

**EFC TANZANIA MICROFINANCE BANK LTD**  
now known as **MWANGA HAKIKA BANK LTD.....1<sup>ST</sup> APPLICANT**  
**STEM GENERAL RECOVERIES.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**PETER MALAKI WILSON.....1<sup>ST</sup> RESPONDENT**  
**OLIVER AMIR MLOMOLA.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 09.03.2023  
Date of Ruling: 27.03.2023

**RULING**

**V.L. MAKANI, J**

The applicants named above are applying for extension of time within which to file an application to set aside the dismissal order in Misc. Land Application No.32 of 2022 (Hon. Msafiri, J).

The application is made under section 14(1) of the Law of Limitation Act, CAP 89 RE 2019 (the **Limitation Act**) and is supported by the affidavits sworn by Mr. Adam Kessy, the Principal Officer of the applicants and Mr. Steven Mayombo, Counsel for the applicants. The respondents filed counter affidavits opposing the application.

The application proceeded orally whereas Mr. Cleophas James, Advocate represented the applicants and the 1<sup>st</sup> respondent appeared in person while Mr. Raphael David, Advocate appeared on behalf of the 2<sup>nd</sup> respondent.

Mr. James prayed to adopt the contents of applicants' affidavits. He said that respondents have only responded to the affidavit of Adam Kessy and failure to respond to the affidavit of Steven Mayombo means that they have conceded to the facts deposed. That according to paragraph 6 of the affidavit the 1<sup>st</sup> applicant was represented by Steven Mayombo who got sick on 04/07/2022 when the case was dismissed. He said Steven Mayombo was admitted in Sinza Hospital where he was suffering from chest pains and fever (**Annexure EFC-1** to the affidavit). He said Steven Mayombo was further diagnosed to have water in the lungs and as a result he did not attend work for 5 days and continued with treatment to 18/7/2022. He went on saying that Steven Mayombo informed the Head of the Department of the status of the cases, but unfortunately, he did not inform him of Misc. Land Application No.32 of 2022 that was dismissed. That the said omission, according to Mr. James, was on account of the frustration

caused by sickness. He said on 20/9/2022 Steven Mayombo discovered that he had lost track of Misc. Land Application No. 32 of 2022 and that was after being notified by Mr. Raphael David, Counsel for the 2<sup>nd</sup> respondent that the case has been dismissed. That he immediately started the process to file this application having discovered that he was already out of time. He insisted that sickness is the strong reason for extension of time. He relied on the case of **Murtaza Mohamed Raza Virani & Another vs Mehboob Hassanali Versi, Civil Application No.448/01 of 2020 (CAT-DSM)** (unreported). He also insisted that the counter affidavit of the 2<sup>nd</sup> respondent did not oppose the issue of sickness and thus the reason has merit. He said that Steven Mayombo never missed court save for the date when the case was dismissed. That the court should look at the trend of the advocate's appearances and take it that the mistake of Steven Mayombo was an oversight on his part.

Mr. James said considering that the applicants are institutions, they cannot be punished by an error of their advocate. He relied on the case of **Masele Hussein Mupambwe vs Onasis Lema t/a Pamba Road services, Misc. Civil application No.152 of 2021 (HC-Mwanza)** (unreported). In that case he said, the court found that an

applicant cannot be punished on account of the advocate's mistake. That the court looked at the history and nature of the case. He prayed for the application to be granted.

In reply, the 1<sup>st</sup> respondent said that the matter was properly dismissed. That when the matter was set for hearing Steven Mayombo was present and when he went absent on 04/07/2022 there was no information for his non-appearance. That the court observed that the applicant is an institution and so Steven Mayombo is not alone. That information was necessary from him to his colleagues. The 1<sup>st</sup> respondent pointed out that the reasons of sickness and other reasons are not true. That it is not possible that he fell sick and never informed his boss as he is an employee. He said the information of his sickness should have been conveyed on the same date of hearing, that is 04/07/2022 and not September 2022 and he agreed with the employer that the advocate was negligent. He said though the employer states that the advocate was negligent but he on the same footing admits that he was sick and this brings confusion. He said that the medical chit is a fabrication and that granting this application would prejudice the respondents as they

have constantly been in court. He prayed for the application to be dismissed with costs.

Mr. David for the 2<sup>nd</sup> respondent said that both the affidavits of Steven Mayombo and Adam Kessy basing on sickness have no merit. He said the medical chit (**Annexure EFC -1**) does not indicate that he was admitted and there is no date of discharge. That the annexure shows the prescription, the diagnosis and excuse duty (**ED**) of five days. That after expiry of the ED he was supposed to be in office. So, from 10/07/2022 to 29/9/2022 which is about 80 days which have not been accounted for. He said in the case of **Masele Hussein Mupambwe** (supra) an applicant is supposed to account for every day of delay. That both affidavits do not state that Steven Mayombo continued with treatment. He said that the 2<sup>nd</sup> applicant is not an employee of the 1<sup>st</sup> applicant and there are no reasons as to why they were not in court when the matter was dismissed on 04/07/2023. That the affidavit does not show the relationship of the applicants. That the reasons of sickness cannot account for delay of 80 days. He prayed for the application to be dismissed.

In rejoinder, Mr. James said that the allegation that the medical chit was forged has no proof. He reiterated that sickness is a genuine reason and further there is no proof that the 1<sup>st</sup> respondent would suffer as a small business if this application is granted. He said the 80 days have been accounted for since Steven Mayombo made follow-up after he resumed work. He further said that, the affidavit of Adam Kessy stated that he is the Principal Officer of the 1<sup>st</sup> and 2<sup>nd</sup> applicants so Steven Mayombo was representing all of them. He further reiterated his main submissions.

I have listened to the rival submissions by Counsel for the parties herein. The main issue for consideration is whether the applicants have raised sufficient reasons to warrant extension of time.

It is trite law that extension of time is the discretion of the court. However, as said above, for the court to exercise such discretion, the applicant has the duty to place before the court sufficient reasons for the delay so that the court can judiciously exercise the said discretion (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported). In the case **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania,**

**Civil Application No. 2 of 2010 (CAT-Arusha)**(unreported). In the latter case of **Lyamuya Construction** (supra) the Court of Appeal outlined the guidelines for grant of extension of time including that the applicant must account for all the delay and the said delay must not be inordinate.

In the present instance, the main reason for the delay to file the application to set aside the dismissal order is that when the application was set for hearing on 04/7/2022 Steven Mayombo Counsel for the applicants fell sick and was admitted in hospital. That when he resumed work on 18/07/2022 he informed his Head of Department of the status of the cases but omitted to inform him of Misc. Land Application No.32 of 2022. Further, he said it was not until 20/09/2022 when he informed the Head of Department of the dismissal order.

The attached medical Chit (**Annexure EFC-1**) only shows that Mr. Mayombo was treated at Sinza Hospital on 04/07/2022 and was given 5 days ED. The 5 days ED ran from 04/07/2022 to 09/07/2022. However, Mr. Mayombo has not stated what he was doing after the expiry of those 5 days. It is stated in Steven Mayombo's affidavit at paragraph 8 that he, on 18/07/2022 updated the Head of Department about the status of

the cases but he mistakenly omitted to update him of the said Misc. Application No.32 of 2022. This is also supported by Adam Kessy in his affidavit at paragraph 11. With respect to both Adam Kessy and Steven Mayombo there is pure negligence on both of them. As Head of Department Adam Kessy was not supposed to wait for Steven Mayombo to update him of the case on 20/09/2022 he was supposed to know what was going on in his department. By being awoken from the slumber in September, 2022 shows that there was laxity on his part. And the fact that Steven Mayombo fell sick and did not inform anyone in his department is also carelessness on his part. As correctly pointed out by the 1<sup>st</sup> respondent as an employee Steven Mayombo would not have remained silent on the date he fell sick, it is obvious that he informed his colleagues within the department and most importantly he to inform the Head of Department who was supposed to rescue the situation. All in all, I find negligence on the part of the advocate and the whole department, more so because the Head was not aware of the case until on 29/09/2022 in essence the whole institution was not aware of the case. Failure of the Head of Department to make follow-up of the impugned application amounts to negligence on the part of the applicants as institution, regardless of whether or not Steven Mayombo failed to update the Head timely. In view thereof there are two things

apparent here. There is negligence on the part of the advocate and Head of Department, and secondly, failure by Steven Mayombo to account for the days from when he resumed work to when this application was filed.

The applicants have tried to show that the omission was because of the negligence of the advocate handling the matter. But in the case of **Jubilee Insurance (Tanzania) Limited vs. Mohamed Samer Khan, Civil Application No. 439/01 of 2020 (CAT-DSM)** (unreported) the Court of Appeal was very clear that negligence of an advocate cannot be taken as a sufficient reason for extension of time.

In this case the Court of Appeal stated:

*"... it is therefore clear, not only that the applicant has totally failed to account for the delay but also that both the applicant and her advocates exhibited negligence and inaction. It should also be emphasized that the negligence of an advocate or his ignorance of the procedure, is not an excuse and does not constitute a sufficient cause for extension of time."*

The case above quoted the case of **Exim Bank (T) Limited vs. Jacquilene A. Kweka, Civil Application No. 348 of 2020 (CAT)**(unreported) where it was emphasized that failure of the advocate to act within the dictates of the law cannot constitute a good

cause for enlargement of time. Consequently, the reasons for the delay by the applicant narrated herein above cannot stand as sufficient to deserve the grant of extension of time. Further in **Lyamuya Construction's case** (supra) and **Elius Mwakalinga vs Domina Kagaruki & 5 Others, Civil Application No.120/7 of 2018** (CAT-DSM) (unreported) any delay must be accounted for which the applicants herein have failed to do so. And the delay of about 80 days, is in my considered view, inordinate.

In the result, it is apparent that there are no sufficient reasons that have been advanced by the applicant to warrant the grant of the application. Subsequently, the application has no merit, and it is hereby dismissed with costs.

It is so ordered.



  
**V.L. MAKANI**  
**JUDGE**  
**27/03/2023**