

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

MISC. LAND APPLICATION NO. 119 OF 2023

(Originating from Land Case No.142 of 2022)

**MAMBO JAMBO TOURS AND TRAVEL LTD..... APPLICANT
VERSUS**

GROFIN SGB LIMITED.....1ST RESPONDENT

GROFIN AFRICA FUND.....2ND RESPONDENT

RAISSA COMPANY LIMITED.....3RD RESPONDENT

RULING

18th May 2023 & 24th May 2023

L. HEMED, J.

Land Case No.142 of 2022 was scheduled to commence to hearing on 8th December 2022 at 10:00 AM. On the said date the applicants who were the plaintiffs in the said case could not enter appearance without any notice. The Court waited them until 12:00 noon when it opted to dismiss the suit with costs for want of prosecution.

The applicants could not take any action until on 10th March 2023 when they presented the application at hand. In this application which is made under section 14(1) of the Law of Limitation Act, [Cap.89 R.E 2019] and section 95 of the Civil Procedure Code, [Cap.33 R.E 2019], the applicants are seeking for the following orders:

"1. That this Honorable Court be pleased to extend time within which the Applicant can file

an application to set aside dismissal order dated 08th day of December, 2022.

2. Any other order the Court deems fit."

The application was supported by the affidavit and supplementary affidavit of one **EDDITRICE FAITH HERI MARCO** the Managing Director of the Applicant. The respondents challenged the application by filing a counter affidavit which was deponed by on NASSOR AHMED, the advocate who was representing the respondents in Land Case No.142 which was dismissed on 8th day of December 2022.

The application was argued by way of written submissions. Mr. Honestus Kulaya, learned advocate, argued on behalf of the applicants while Mr. Nassor Ahmed and Ms. Gladness Tupa learned counsel, acted for the respondents. The applicants' submissions in chief was filed on 4th day of May 2023 while reply submissions from the respondents was presented for filing on 11th May 2023. Rejoinder submissions ought to have been filed by 17th May 2023, but the applicant could not file it in time due to service problems. With the leave of this Court rejoinder submissions was file on 23rd May 2023.

In the matter like the one at hand, the applicants are obliged to demonstrate good and sufficient cause for the delay. In the affidavits and submissions of in support of the application, it has been averred that the applicants failed to file an application to set aside dismissal order in time due to misdeeds by the advocate they engaged, one Mr. Jonathan Wangubo. It was stated that the said advocate, despite of his failure to attend the hearing in Land Case No. 142 of 2022 on 08th December 2022,

he never communicated the same to the applicants until 03rd day of March 2023.

The applicants also leveled blames against the advocate that he never contacted the Applicants on the updates regarding the case and that he was not reachable by any means of communication. It was also asserted that the applicants had travelled to London - United Kingdom for official duties from 06th December 2022 to 15th December 2022. The decision of the Court of Appeal of Tanzania in **Tumsifu Kimaro (The Administrator of the Estate of the late ELIAMINI KIMARO) vs Mohamed Mshindo**, Civil Application No.28/17 of 2017, to substantiate the submission that the applicants have accounted for the delay.

It was finally submitted that Land Case No.142 of 2022 carries a serious question of law attracting courts attendance and interpretation as the 1st respondent herein entered into the mortgage deed with the applicant while being not registered as a financial institution capable of conducting Banking business in Tanzania by the Bank of Tanzania in contravention of section 6(1) of the Banking and Financial Institutions Act of 2006. It was thus submitted that the Court should grant leave to the applicants to file application to set aside dismissal order on the ground of illegality.

In response to the submissions in chief, the respondents contended that the applicant has failed to show reasonable or sufficient cause to warrant this Court grant the application. It was submitted that the applicants have failed to account for each day of the delay. The counsel for the defendants stated that the applicants delayed for 60 days, from the

date of dismissal to the date they filed the application. All days delayed have not been accounted for.

As to the point of the Managing Director travelling to London on 6th up to 15th December, 2022, it was the argument of the counsel for the respondents that the applicant herein is a company registered under the laws of Tanzania thus another director, manager or officer of the Applicant could have attended the case. They thus submitted that the said reason does not qualify to be a sufficient cause to set aside dismissal order. With regard to the allegation that the previous advocate's failure to communicate, it was submitted that the applicants' relationship with their advocate is privy to them, it does not qualify as sufficient cause for grant of extension of time.

It was finally asseverated that, the failure of the applicants to prosecute their case or abandon it which led to the dismissal of Land Case No.142 of 2022 does not amount to illegality rather a negligence on the part of the applicants.

In the short rejoinder, the applicant reiterated what was stated in submissions in chief. The counsel for the applicant stressed that the days of the delay have been accounted for as the applicant's director came across with the dismissal order on 3rd March 2023 and immediately thereafter took initiative to file this application.

It was the further submissions of the applicant that Application No. 19 of 2021 and that No. 421 of 2021 at the District Land and Housing Tribunal for Kinondoni have nothing to do with the application at hand. It was also argued that Land Case No.142 of 2022 carries a serious question of law

which is crucial for this court to determine as it has been averred in uncontested supplementary affidavit by the Applicant. It was concluded by a prayer that the application be granted.

I have carefully considered the affidavits in support, counter affidavit, rival submissions and the cited authorities. The main issue for determination is whether the application is meritorious.

In terms of section 14 of the Law of Limitation Act, [Cap 89 RE 2019] under which the application at hand has been preferred, an extension of time is granted upon the court being satisfied that the applicant has demonstrated sufficient cause. Sufficient cause is determined basing on the circumstances of each case. Case law has set out the guiding principles or factors which aid the court in determining if good and sufficient cause has been established. In the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, the Court of Appeal of Tanzania stated thus:-

"(i) The applicant must account for all the 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.

(iv) if the court feels that there are other sufficient reasons such as the existence of

point of law of sufficient importance, such as illegality of the decision sought to be challenged."

Reverting to the instant application, the record shows that the order subject of this application was issued on 8th December 2022, when Land Case No.142 of 2022 was dismissed for want of prosecution. According to item 9, Part III of the Schedule to the Law of Limitation Act, [Cap 89 RE 2019], the application for restoration ought to have been made within 30 days from the date of dismissal, that is by 7th January 2023. The applicants filed the present application on the 10th March 2023, almost 63 days of the delay. I have gone through the affidavit and the submissions made to support the application; I could not find any thing stated showing what the applicants were doing in the all 63 days in respect to their matter. In other words, the applicants have failed to account for the 63 days of delay. Additionally, the delay for 63 days is inordinate because for someone who truly has interest in prosecuting his case, delaying the same for such long time without having an update of the case willingly filed, is unreasonable and inexcusable.

In the affidavit in support of the application, the deponent one **EDDITRICE FAITH HERI MARCO**, stated to be the Managing Director of the Applicant. She averred that on 6th December 2022 up to 15th December 2022 she traveled to London. This cannot be a reason for not filing the application to set aside the dismissal order in time because the Applicant herein is a company registered under the laws of Tanzania. The fact that the applicant is a legal person who has more than one director or officers, another officer of the Applicant could have attended to the case.

The applicants have vehemently leveled blames to the advocate who was engaged to represent them in Land Case No.142 of 2022 that he never updated them with the status of the matter. It is my firm view that the applicants ought to have demonstrated how they made follow up of their cases after having engaged the advocate. I have noted the fact that on the date when Land Case No.142 of 2022 was dismissed, it was the day when the plaintiff were to parade their witnesses. Since the advocate could not adduce evidence, it was important for the applicants' officers to appear, they cannot exonerate themselves from the blame. After all, the law is settled that negligence of the advocate is not a defence or a good and sufficient cause for extension of time. This was stated in **Deodat Dominic Kahanda & Another vs Tropical Fisheries (T) Limited & Others**, Misc. Commercial Application No. 200 of 2017, HC Commercial Division, where it was stated thus:-

"What is glaring to the eye here is sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time."

I must insist that an advocate who is representing a party in court is an agent of that party. Under principal-agent relationship, everything done by such agent is as good as if done by his principal. This has the meaning that, having engaged an advocate does not shift the duty of that party to make follow up of his/her case. This was also stated by the Court of Appeal of Tanzania in **Lim Han Yun and Another vs Lucy Theseas Kristensen**, Civil Appeal No.219 of 2019, that: -

"The appellants cannot throw the whole blame on their advocates. We think that a party to a case who engages the services of an advocate, has a duty to closely follow up the progress and status of his case. A party who dumps his case to an advocate and does not make any follow ups of his case, cannot be heard complaining that he did not know and was not informed by his advocate the progress and status of his case." (Emphasis added)

The applicants also raised the point of illegality that Land Case No.142 of 2022 carries a serious question of law attracting courts attendance and interpretation. I am aware that illegality stands as ground for extension of time if it is apparent on face of the decision subject to the application. This position was stated and emphasized in **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No.10 of 2015, thus: -

"I am not persuaded that the alleged illegality is clearly apparent on the face of the impugned decision. Certainly, it will take a long drawn process to decipher from the impugned decision the alleged misdirection or non-directions on point of law." (Emphasis added)

In the instant case, the applicants did not depose how the impugned dismissal order is tainted with illegality. The counsel for the applicants contended that the illegality is in the dismissed Land Case No.142 of 2022 and not the Order itself. It is my firm view that illegality in the dismissed

Land Case No.142 of 2022 cannot be sufficient and good cause for extension of time.

In the final analysis, I find no merits in the application. The applicants have demonstrated no good cause for this Court to extend time. This application fails and accordingly dismissed with costs for want of merits. Order accordingly.

DATED at DAR ES SALAAM this 24th day of May 2023.



COURT: Ruling is delivered this 24th May 2023 in the presence of **Mr. Honestus Kulaya** advocates for the applicants and **Ms. Gladness Tupa** and **Nassoro Ahmed** advocates for the respondents. Right of appeal explained.

