

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

MISC LAND CASE APPLICATION NO. 222 OF 2023

(From the decision of Hon.Opiyo J dated 17th November 2021 at the High Court of Tanzania Land Division in Misc. Land Application No 670 of 2020)

RAMADHANI TUNGU MASANJA..... APPLICANT

VERSUS

ZAINABU ATHUMANI.....1ST RESPONDENT

**SALUM ABDALLAH MOHAMED (As Administrator of the
Estate of the Late Abdallah Makongwa.....2ND RESPONDENT**

RULING

Date of Last order: 24.05.2023

Date of Ruling: 20.06.2023

A. MSAFIRI J.

On the 19th day of April 2023, the applicant lodged an application in this Court by way of chamber summons 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] seeking for the following orders:-

1. *That this Honourable Court may be pleased to grant extension of time within which the Applicant will able to make an application seeking to raise Memorandum of Review regarding to the above captioned suit;*
2. *Costs of this Application be provided for; and*

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3. *Any other order that this Honourable Court may deem fit and just to grant.*

The application has been taken at the instance of the applicant and is supported by an affidavit affirmed by the applicant himself. The respondents opposed the application by filing counter affidavits affirmed by Zainabu Athumani and Salim Abdallah Mohamed, the 1st and 2nd respondents respectively.

The applicant appeared in person and had no legal representation whereas the respondents appeared through Mr. Salmin Suleiman Mwiry, learned Advocate. On 24th May 2023, this Court ordered the application to be disposed of by written submissions. Both parties filed their submissions in support and opposition of this application respectively.

To support his application, the applicant submitted that there were gaps in the decision of the District Land and Housing Tribunal. That the Tribunal failed to declare him as the lawful owner, while he was allocated the disputed land by the Ministry for Lands and was issued with the three certificates of titles in his name. He aimed to review the ruling of Honourable Opiyo, J in Land Appeal No 146 of 2019 under Order XLII Rule 1(1) (a) (b) of the Civil Procedure Code which provides for review. He prayed to the Court to grant this application.

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Surprisingly, in his written submission, the applicant made submission on the grounds for review instead of giving sufficient and good reasons for his delay to file the intended application for review within time.

Hence this Court had to disregard the contents of the submission in chief and rely only on the affidavit of the applicant.

In the affidavit, the applicant stated that after being aggrieved by the decision of this Court where his appeal was dismissed, he filed a review which went before the same Judge who presided the appeal. That the same Judge could not proceed with the case hence she remitted the file to the Registrar for further orders.

The applicant averred that he was not told that the file was sent to the registrar so he kept waiting. That, later he was told that the application was withdrawn with leave to refile. He maintained that for the interest of justice, it was necessary for the applicant to be granted an extension of time to file his memorandum of review and that he will suffer irreparable loss if the same will not be granted.

In reply, the respondent's counsel submitted that the applicant failed to establish a good cause to justify his prayer and has failed to account for each day of delay. That the applicant did not state why he failed to file the sought application for review within the period prescribed by the law.

Adde.

The counsel for the respondents submitted further that Misc. Land Application No.670 of 2020 was withdrawn with order to refile on 17th November 2021. The applicant had 30 days to file another application from the said date, however, he did not do so until 14th April 2023 when he filed the present application and with no account of about 522 days of delay. Therefore, the counsel for the respondents prayed that the application be dismissed with costs.

There was no rejoinder.

Having gone through the applicant's affidavit in support of the application at hand, the sole issue that calls for Court's determination is whether the application has merits. Before going to the merits or otherwise of the application at hand, it is imperative to address one fundamental point of law. The provisions of Section 14 (1) of the Law of Limitation Act [Cap. 89 R. E. 2019] cited by the applicant to move this Court provides that:

*"14 (1) - Notwithstanding the provisions of this Act, the court may, for any **reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application"* [Emphasize is mine].

Basing on the above provision of the law, it follows therefore that the

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Court has discretionary power to grant an extension of time if beforehand there are sufficient reasons and good cause to warrant this Court to exercise that discretion. This principle of law has been stated in several cases including the cases of **Benedict Mumelio v. Bank of Tanzania**, [2006] 1 EA 227; **Bertha Bwire v. Alex Maganga**, (Civil Reference No.7 of 2016) [2017] TZCA 133; (20 November 2017); In **Bertha Bwire v. Alex Maganga**, (supra) our Apex Court held inter-alia that:

"...It is trite law that extension of time is a matter of discretion on the part of the Court and that such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case."

However, the term "**good cause**" or "**sufficient cause**" has not been specifically defined. But the courts have discretionally construed that good cause usually depends on the circumstances of each case. For instance, in **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001 (unreported), the Court of Appeal (T) (Mroso, JA.) had the following to state: -

"This court in a number of cases has accepted certain reasons as amounting to sufficient reasons. But no particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application". Alls.

As regards the factors that may be considered as good and sufficient cause, the proposition was well articulated in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association Tanzania**, Civil Application No.2 of 2010 (unreported).

Back to the application at hand, looking at the affidavit deposed by the applicant and filed in Court to support the application, as observed earlier, the applicant did not adduce any reasonable cause to support this application. In paragraphs 4 and 5 of the affidavit, he stated that the file was transferred to Registrar and later on he discovered that his application was withdrawn with the leave to refile. It is my considered view that there was negligence on the part of the applicant. He did not make follow up on his case and shifted the burden to the Registrar of the Court.

The applicant also failed to account for each day of the delay. A requirement of accounting for every day of delay is vitally important and the same has been emphasized by our courts in numerous decisions, for instance in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Karibu Textiles Mills v. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016. In the **Bushiri's** case it was rightly held:- *Adelle*

"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 must be taken".

Since the applicant has failed to account for each day within the 522 days of delay according to the law, I find the application to have no merit and I therefore, proceed to dismiss it with costs.

It is so ordered

Alles
A. MSAFIRI
JUDGE
20/6/2023

The seal of the High Court of Tanzania, Land Division, is a circular emblem. It features a central shield with a scale of justice and a book, flanked by two figures. The text "THE HIGH COURT OF TANZANIA" is written around the top inner edge, and "LAND DIVISION" is written around the bottom inner edge. A star is positioned at the bottom center of the inner circle.