

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

MISC. LAND APPLICATION NO. 438 OF 2023

(Arising from Misc. Land Application No. 323/2014, Land Division)

LOTUS VALLEY LIMITED.....APPLICANT

VERSUS

ALASAI JOASIAH (Suing by his Attorney

Oscar Sawaka)..... RESPONDENT

RULING

11th to 13th October, 2023

E.B. LUVANDA, J

The Applicant above named filed this application moving this court for an order that: this court pe pleased to extend time for the Applicant to give a notice of appeal from the judgment in respect of Land Case No. 323 of 2014; this court pe pleased to extend time for the Applicant to appeal out of time from the judgment in respect of Land Case No. 323 of 2014; this court pe pleased to grant the Applicant for an extension of time for submitting the letter requesting from the High Court Land Division for certified copies of the proceedings, judgment and decree in Land Case No. 323 of 2014; costs and any other relief.

In the affidavit in support, the Applicant grounded technical delay from 20/02/2023 when Civil Appeal No. 90/2020 was withdrawn at the Court of Appeal, thereafter on 1/03/2023 the Applicant wrote a letter requesting for a copy of ruling for withdrawal, supplied to him on 5/04/2023. From 6/04/2023 to 10/04/2023 the Applicant alleged it was Easter Holiday week. From 11/04/2023 to 2/07/2023 the Applicant pleaded to have been involved on various consultation meetings with her advocate concerning instructions fees and way forward. From 3/07/2023 to 17/05 (sic, 07)/2023 was used to assemble and preparation of documents. On 17/05 (sic, 07)/2023 the application was ready, but was hustling to obtain control number till on 20/07/2023 when it was filed.

In the counter affidavit, the Respondent opposed the application for reason that the Applicant gave no ground for withdrawing Civil Appeal No. 90/2020. He asserted that there was no need for obtaining copy of ruling before instituting this application. He asserted deliberate delayment and lack of seriousness on the part of the Applicant calculated to delay justice to the Respondent.

Mr. Frank Kifunda learned Counsel for the Applicant submitted that the Applicant failed to refer the matter within the prescribed time limit due to

reason that there was technical delay that occurred on Civil Application No. 498/12 of 2019 on which the Applicant appealed against the decision of extension of time in favour of the Respondent. He submitted that on 20/02/2023 when the appeal was called for hearing, the Applicant prayed to withdraw the appeal with leave to refile. He submitted that failure to file this application by the Applicant was not by her own whims rather due to technical delay in changing the decision in Land Case No. 323/2014. The learned Counsel reproduced reason which were grounded in the affidavit of the Applicant, in pursuit of accounting each day of delay. He cited the case of **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3/2007; **Wilbard Mathew Senga vs Mkwega George Mathew Senga & Another**, Civil Application No. 508/2020 CAT.

In reply, Mr. Mark S. Lebba learned Counsel for Respondent submitted that the Applicant is not entitled to the orders sought, argued has failed to demonstrate due diligence and to show good cause for the inordinate delay in making the Application for extension of time. He submitted that the Applicant failed to show sufficient cause for this Court to exercise its discretionary power to extend time. He submitted that from 20/02/2023 when Civil Appeal No. 90/2020 was withdrawn to the date of lodging this

application on 20/07/2023, 150 days expired, argued it is inordinate and excessive for the purpose of applying for extension of time.

Frankly speaking this application deserve to be dismissed summarily. The reason for delay is alleged to be technical delay in prosecuting Civil Appeal No. 90/2020 which was withdrawn on 20/02/2023. It was on 1/03/2023 being after elapse of eleven days, the Applicant requested for a copy of ruling for withdrawal of appeal, alleged supplied to him on 5/04/2023. But neither the alleged letter annexure LV9 nor ruling for withdrawal as deponed in paragraph eleven of the affidavit in support, attached to the affidavit. Thereafter the Applicant pleaded to have been in dilemma, including the whole period of Easter Holiday form 6/04/2023 to 10/04/2023. From 11/04/2023 to 2/07/2023 a period of almost three months, the Applicant asserted to have been engaged with consultation meeting with her Attorney, all along debated and bargaining on instruction fees and way forward, as if they placed stop watch for time to stop running against them for the entire period of negotiation of fees for filing and handling an application for extension of time. From 3/07/2023 to 17/07/2023 a period of more that two weeks it was wasted for assembling and preparation of documents being an affidavit comprising ninety paragraphs, attachments of a copy of the impugned judgment and decree, notice of appeal, a letter applying for

certified copies of proceedings, judgment and decree, certificate of delay, memorandum of appeal and a summons for hearing of Civil Application No. 265/2022. To say making a photostat of these documents, it take two weeks, is nothing but a demonstration of in action, inordinate and exorbitant delay constituting negligent and sloppy in taking appropriate steps on time or without unnecessary delay. The above narration cannot be said to have formed any sort of accounting delayment neither constitute sufficient cause for delay. In **Bushiri Hassan** (supra), it was established that,

'Delay, even of a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken'

The applicant instead of accounting for delay, rather was demonstrating her negligent.

The application is dismissed with costs.

In view of that, it is taken that the Applicants failed to demonstrate reasons for delay and good cause for extension of time.

The application is dismissed with costs.



E.B. LUVANDA
JUDGE
13/10/2023

Ruling delivered through video conference attended by Mr. Benedict Magoto Mayani learned Advocate for the Applicant also holding brief for Mr. Mark S. Lebba learned Counsel Respondent.



E.B. LUVANDA
JUDGE
13/10/2023