

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

MISC. LAND APPLICATION NO. 768 OF 2023

(Arising from Land Case No. 105 of 2018, Land Division)

MAULID MOHAMED MAFANYA (Next Friend of

Yusuf Kassim Yusuf).....**APPLICANT**

VERSUS

MOHAMED EIDHA AWADH.....**1ST RESPONDENT**

MWANAHAMISI KASSIM YUSUF.....**2ND RESPONDENT**

MWANAHAMISI KASSIM YUSUF (Administratrix

Of the Estate of the Late Hamis Kassim Yusuf).....**3RD RESPONDENT**

HALIMA KASSIM YUSUF.....**4TH RESPONDENT**

FATUMA KASSIM YUSUF.....**5TH RESPONDENT**

RAMADHANI KASSIM YUSUF.....**6TH RESPONDENT**

RULING

1st to 28th March, 2024

E.B. LUVANDA, J

This is an application for extension of time within which to file an application for review in Land Case No. 105 of 2018 resolved through the deed of settlement.

In the affidavit in support of this application, the Applicant named above alleged to have been assigned by the family meeting to petition for the next

friend of Kassim Yusuf Seif (alleged diagnosed to have psychiatric mental disability and adjudged as a person of unsound mind, as per medical report annexure M-1), so that to be able to administer and protect his rights including to sue in his capacity. He asserted that on 15/08/2018 the late Hamis Kasim Yusuf and other four Yusuf Kassim Yusuf's kindred instituted Land Case No. 105 of 2018 engaging Yusuf Kassim Yusuf as the Sixth Plaintiff, while he was of unsound mind, claiming breach of a sale agreement of land Plot No. 9 Block 14, Kariakoo Area, Ilala Dar es Salaam. Thereafter on 18/10/2018 they agreed with one Mohamed Eidha Awadh to settle the said case out of court and engaged Yusuf Kassim Yusuf as one of the Plaintiffs who negotiated settlement and executed deed of settlement which was later decreed as per annexure M-3, while he was of unsound mind. He asserted that he failed to lodge an application for review on time due to a lack of knowledge regarding the deed of settlement involving Yusuf Kassim Yusuf as a party to the case. He alleged to have petitioned at this Court through Misc. Land Application No. 459 of 2022 filed on 5/08/2022 but was dismissed on 26/09/2022 for lack of jurisdiction. On 29/09/2022 he filed Misc. Civil Application No. 429/2022 in the High Court Dar es Salaam District Registry, where he was appointed on 20/01/2023, and received the ruling

on 21/03/2023. He asserted that immediately after getting the ruling and drawn order, he felt sick, complained of severe headed (sic) chest pain and dizziness also unable to walk properly since 15/03/2023 and undergone long term treatment up to 1/11/2023 where the medical doctor certified that he is improving and ready to continue daily activities (as per copy of medical report annexure M-6 to the affidavit), hence commenced preparation of documents for this application from 2/11/2023 to 14/11/2023.

The matter proceeded in absence of all Respondents after defaulted to file counter affidavit neither entered appearance.

Mr. Yona Lucian Habiye learned Counsel for Applicant submitted in replica to the averments in the affidavit in support as reproduced at length above. He submitted that sickness is a good or sufficient cause for an extension of time, citing **Mwana Mohamed vs Ilala Municipal City**, Misc. Land Application No. 12 of 2020; **John David Kashekya vs The Attorney General**, Civil Application No. 1 of 2012 CAT.

It is true that annexure M3 is a decree on deed of settlement where the said Yusuf Kassim Yusuf appeared as the Sixth Defendant. The said decree is dated 18/10/2018. The alleged medical report where the said Yusuf Kassim

Yusuf was adjudged as a person of unsound mind, depict was issued on 4/08/2022 being almost after expiry of three years and ten months counting from when the decree based on the deed of settlement was reached on 18/10/2018. By the time when the report was issued on the said 4/08/2022, Yusuf Kassim Yusuf was aged fifty-three anos. A medical report suggest Yusuf Kassim Yusuf had been evaluated at the facility several times since 2013. The Medical Specialist did not rule out Yusuf Kassim Yusuf is suffering from schizophrenia which is a major mental illness.

This means there is no good cause and reasons for extending time. I am saying so because the Applicant grounded a delay to have been attributed with his severe ailment from 15/03/2023 to 1/11/2023, but a medical report to support his assertion annexure M6 reveal the Applicant was last seen at the facility on 15/01/2023. Arguably annexure M6 the medical officer in charge opined, I reproduce for brevity,

'Due to his condition patient was not fit for performing his daily activities i.e. from that day starting silkiness (sic) 15.01.2023

But now patient improved and can able (sic) to continue with his daily activities'

Unfortunately in the contents of the medical report the medical officer in charge omitted to mention a specific date to his assertion that "...but now patient improved..."

The date was inserted below his signature. In a copy of a medical report attached to the affidavit as annexure M6, I created doubts due the format and style that date was inserted. This necessitated me to call for the production of the original document for appraisal. In the original version the discrepancy of a handwriting and ink of a pen used to insert the date is vivid that substantially differs with a signature. This means that the date was dubiously inserted and concocted to suit the circumstances of accounting for the delay in this application.

More importantly the facts deponed by the Applicant in the affidavit contradict with the medical report annexure M6. While at paragraph ten the Applicant allege he was appointed by the High Court Dar es Salaam District Registry on 20/01/2023 and received a ruling and drawn order on 21/01/2023, at the proceeding paragraph to wit paragraph eleven the Applicant asserted that immediately before getting ruling and drawn order on 21/03/2023 he felt sick, severe headed chest pain and dizziness, unable to walk properly, and was put on long term treatment as from 15/01/2023

to 1/11/2023. A query is, if the Applicant started sickness on 15/01/2023 as opined by the medical office in charge, how he managed to attend on the date of appointment before the Hight Court Dar es Salaam on 20/01/2023, and visited again on 21/03/2023 to procure a ruling and drawn order but was unfit and unable to visit the next building to lodge this application.

The Application is dismissed for want of good cause and reasons for extending time. No order to costs.



E. B. LUVANDA
JUDGE
28/03/2024

Ruling delivered in the presence Mr. Yusto Habiye learned Counsel for the Applicant and in the absence of the Respondents.



E. B. LUVANDA
JUDGE
28/03/2024