

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 25931 OF 2023

(Arising from Land Case No. 68 of 2022, Land Division)

ANNA LEONARD SHANGO.....APPLICANT

VERSUS

EFC TANZANIA LTD.....1ST RESPONDENT

MEM AUCTION & GENERAL BROKERS.....2ND RESPONDENT

TANZANIA QUALITY AUCTION MART LIMITED.....3RD RESPONDENT

NGABANI PATRICK MTENGA.....4TH RESPONDENT

RULING

20th to 27th March, 2024

E.B. LUVANDA, J

This is an application for extension of time within which to file application for restoration of the Land Case No. 68 of 2022 which was dismissed for want of prosecution on 7/03/2023.

In the affidavit in support of this application, the Applicant named above grounded that she was busy taking essential steps to appeal to the Court of Appeal, until on 20/11/2023 when her admission was blocked at the Registry

of the apex Court for an advise that she ought to have better filed restoration prior embarking to appeal.

In the joint counter affidavit of the First, Second and Third Respondent also the counter affidavit of the Fourth Respondent, all heaped blame to the Appliant and her advocate for negligence in processing the appeal instead of filing an application for restoration. They stated that the Appellant failed to account from 7/03/2023 to 21/11/2024 when this application was filed.

In her submission in chief, the Applicant submitted that she still has interest on the matter, reiterating steps taken towards filing the records of appeal up to 20/11/2023 when admission was unsuccessful.

Mr. Cleophas James learned Counsel for Respondents submitted that the Applicant failed to account from 7/03/2023 when the matter was dismissed to 21/11/2023 when she filed this application.

The rejoinder by the Applicant was almost moonshine, instead she introduced a new set of facts asserting that her Counsel one Ms. Catherine Lyasenga was on maternity leave. This facts was not pleaded in the affidavit, accordingly is ignored.

Now, going by the affidavit of the Applicant she narrated chronologically steps taken to challenge the impugned order, including requesting to be supplied with certified copies of orders and proceedings for appeal purpose, filing notice of appeal as per annexure A-2 to the affidavit; request for and grant of certificate of delay issued on 16/11/2023 as per annexure A-3 to the affidavit; and ultimate unsuccessful admission of her appeal on 20/11/2023. According to the e-case management system the admission of this application was on 21/11/2023, being hardly twenty four hours from the unsuccessful lodging of appeal.

To my view, this amount to technical delay, where the Appellant was busy fighting for recourse in pursuit of her right to a wrong forum. Therefore the delay is not inordinate one.

The Applicant is given an extension of fourteen days to present her intended application for restoration.

The Application is granted. No order to costs.



E. B. LUVANDA
JUDGE
27/03/2024

Ruling delivered in the presence of the Applicant and in the absence of the Respondents.

E. B. LUVANDA

JUDGE

27/03/2024