

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 238 OF 2023

(Originating from the Judgment and Decree of the High Court of Tanzania (Land Division) dated 09th September 2022 in Land Appeal No. 302 of 2022)

PATRICK YOHANA CHIUNDA APPLICANT

VERSUS

LUCY BONAVENTURA NAMUBA 1ST RESPONDENT

PETER SILAS ABEID 2ND RESPONDENT

Date of Ruling 28/02/2024

Date of the last order 13/12/2023

RULING

A. MSAFIRI, J

On 25th April 2023, the applicant, Patrick Yohana Chiunda, filed the present application under Section 14(1) of the Law of Limitation Act, CAP 89, R.E 2019 against the above respondents seeking for the following orders: -

- 1. This Honourable Court may be pleased to grant extension of time within which the Applicant can file application to set aside exparte judgment and decree arising from Land Appeal number 302 of 202.(sic)*
- 2. Any other order(s), this Honourable Court may deem fit and just to grant.*

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3. Cost of this Application to follow the event.

The application was supported by an affidavit deposed by the applicant himself and the respondents challenged it by filing their counter affidavits. The disposal of the Application was by way of written submissions whereas, the applicant appeared in person, with no legal representation, the 1st respondent was represented by Ms. Hawah Nanyanzi, learned Advocate, while the 2nd respondent was present in person.

On his submission to support the application, the applicant stated that the Land Appeal No.302 of 2021 which was delivered by this Court on 09th September, 2022 before Hon.Makani, J. was heard ex parte against him and that he became aware of the existence of the judgement on the said appeal on 24th March, 2023.

He further stated that he is aware of the provision of the law under Item 5 of Part III to the Schedule of the Law of Limitation Act, Cap 89 [R.E. 2019] that provides for 30 days to file application to set aside the ex-parte decree, however, he insisted that he became aware of the said impugned ex parte judgment when the granted 30 days had already lapsed, hence this application for extension of time was inevitable.

He further stated that the reasons for this application are included in paragraphs 8,9, and 10 of the applicant's affidavit that the applicant was

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unaware of the appeal until 24th March, 2023, and that the applicant was not served with summons to appear to defend the case against him.

He cited the case of **Abbas Sherally & another vs Abdul Sultan Haji Mohamed Fezaboy**, Civil Application No. 133 of 2002 where it was held that the right to be heard is so basic that a decision which is arrived in violation of it, will be nullified.

The applicant submitted further that the procedures for serving summons are provided under Order V of the Civil Procedure Code Cap 33 [R.E. 2019], but the same were not observed as he was never served with summons to appear since he was out of the country from 06th February, 2023 to 18th March, 2023.

The applicant argued that he was not served with summons to appear for the Judgment delivery on 09th September, 2022. He cited the case of **Cosmas Construction vs Arrow Garments Ltd** [1992] TLR 127; which observed that; -

"A party who fails to enter an appearance disables himself from participating when the proceedings are consequently ex-parte, but has to be told when the judgment is delivered so that he may, if he wishes, attend to take it as certain consequences may follow".

Hence, he prayed that this Court be pleased to grant extension of time to the applicant to file an Application to set aside exparte judgment. On

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reply, Ms. Nanyanzi, counsel for the 1st respondent adopted the counter affidavit deposed by Lucy Bonaventura Namuba herein the 1st respondent and contended the applicant's submission on the ground that the applicant has not managed to account for all the days delayed for him to be granted the application.

She was of the view that, the applicant became aware of the Land Appeal decision, delivered on 09th September, 2022, the applicant claims he became aware of the said judgment on 24th March, 2023, and that this application was filed in this court on 17th April, 2023 whereby there is a delay of 25 days which was unaccounted for, that is from 24th March, 2023 to 17th April, 2023. To bolster her point she cited the case of **Bushir Hassan vs Latifa Mashayo**, Civil Application No.3 of 2007 which held that; -

"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 have to be taken"

She urged this honourable court to dismiss the application in entirety with costs.

On the other hand, the 2nd respondent had not much to say, but she submitted that if the court is satisfied that the applicant has advanced

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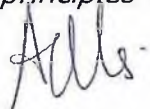
sufficient good reason for him to be granted extension of time, let the court grant the same.

After a careful consideration of the submissions of the parties, the issue for my determination is whether the applicant has advanced sufficient good reasons to be extended time to file application to set aside the ex-parte Judgment.

It should be clear that the Application before me at this juncture is for the extension of time to file application to set aside ex-parte decree, and not an Application to set aside ex-parte decree because the two applications are diverse.

I will be specific that for this court to grant extension of time, the conditions are already set in good number of cases including the case of **Bushiri Hassan Vs. Latifa Mashayo (supra)**, and the case of **Khadija Rehire Saidi And 5 Others vs. Mohamed Abdallah Saidi**, Civil Application No. 39 of 2014 at Dar es Salaam (unreported) where the following guidelines were set in relation to the applications for extension of time;

"the determination of what constitute a good cause (reasonable or sufficient cause) involves an application of judicial discretion, but there are certain established principles which would guide the courts in reaching a decision in each case."



These considerations include but not limited to:

- i) The length of delay*
- ii) The reason for delay*
- iii) The degree of prejudice to the respondent if the application is granted, and*
- iv) Whether it raises any point of public importance or illegality in the decision, that is to say, if there is an arguable case"*

Furthermore, in the case of **Lyamuya Construction Company Ltd vs Board of Trustees of Young Womens' Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court was of the view that discretion to extend time is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily.

And in the case of **Oswald Masatu Mwizarubi vs. Tanzania Fish Processors Ltd**, CAT Civil Application No. 13 of 2010 (Mwanza Registry, unreported) dealing with an application for extension of time, Mjasiri J.A. (as she then was) had this to say;

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case. **It is upon the party seeking extension of time to provide the relevant material** in order to move the court to exercise its discretion."(emphasis supplied).*



In the application at hand the issue of being unaware of the Land Appeal No. 302 of 2021 is immaterial, the applicant had to account for the days of delay after he became aware of the decision of this court on 24th March, 2023. The applicant has not managed to account for the delayed 24 days from 24th March, 2023 when he became aware of the ex-parte decree to 17th April, 2023 when the applicant filed this application before this court. The conditions set in above cases reveal that a delay of even a single day has to be accounted for.

The applicant has left 24 days unaccounted for, and in such circumstances I find that he has failed to advance good and sufficient cause upon which this Court can exercise its discretion judiciously.

For the above reason, this Application is dismissed with costs.

It is so ordered.


A. MSAFIRI
JUDGE
28/02/2024

