

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 25982 OF 2023

(Arising from Bill of Costs No. 34 of 2020, Land Division)

KABULA AZARIA NG'ONDI.....1ST APPLICANT

ADIEL KUNDASANY MUSHI.....2ND APPLICANT

NEEMA ADIEL MUSHI.....3RD APPLICANT

VERSUS

MARIA FRANCIS ZUMBA.....RESPONDENT

RULING

8th to 19th April, 2024

E.B. LUVANDA, J

This is an application for extension of time within which to file an application for reference against the ruling delivered on 12/04/2023 in respect of the above captioned bill of costs.

In the affidavit in support, the Applicants grounded that they filed Reference No. 32 of 2023 which was withdrawn on 8/11/2023 for reason of defective affidavit. That since 8/11/2023 they have been making follow up of court orders only to be told that was yet to be typed.

In the counter affidavit, the Respondent stated that the issue of making follow up is unreliable and the Applicants shall have to prove it.

Mr. Peter Nyangi learned Counsel for Applicants submitted that the delay of twenty-nine days is not inordinate, for reasons that from 8/11/2023 when Reference No. 32 of 2023 was withdrawn, have been making follow up for an order and lodged the application on 19/11/2023 and obtained control number for payment on 22/11/2023. He submitted that the reasons for delay was that the Applicant was prosecuting Reference No. 32 of 2023.

Ms. Regina Herman learned Counsel for Respondent submitted that counting from the date of ruling to the date of filing of this application is almost forty-two days, arguing the law require the Applicants to advance sufficient cause of his delay. She submitted that the Applicants ought to account for each day of delay from 11/10/2023 to 22/11/2023 and the reasons for staying for forty-one days.

On rejoinder, the learned Counsel for Applicants reiterated that the delay of twenty-nine days is not inordinate, computing from the date when Reference No. 32 of 2023 was filed on 24/10/2023 to the date when this application was filed on 22/11/2023. He submitted that they have successful accounted on each day of delay in the affidavit.

It is common ground that Reference No. 32 of 2023 was filed within time allowable under extension grantable vide Misc. Land Application No. 378 of 2023. Reference No. 32 of 2023 was withdrawn on 8/11/2023 on defect in the affidavit in support of the application. According to the averments in the affidavit in support of this application, from 9/11/2023 to 17/11/2023 the Applicants were making follow up of an order for withdrawal, in vain.

On my part, I hold the view that the Applicants have successfully accounted for the delay for the reason of technical delay in prosecuting Reference No. 32 of 2023, withdrawn on 8/11/2023 then filed this application on 22/11/2023.

The Applicants are granted extension of fourteen days to file the intended reference, which will run from the date hereof.

The Application is granted. No order for costs.



E. B. LUVANDA
JUDGE
19/04/2024