

TANZANIA / JUDGMENT

Misc

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND APPLICATION. NO. 21482 OF 2024 (Arising from Land Case No. 6349 of 2024) which was withdrawn with leave to re-file by Honorable Mwaipopo, Madam Judge on Offi1 July, 2024) ABBAS JUMA MTEMA..... APPLICANT VERSUS ST TED FRANK SILKILUWASHA..... 1RESPON KACHETI MUBA @ MOHAMEDI KACHETI..... 2ndRESPON COMMISSIONER FOR LAND..... 3rdRESPOND ATTORNEY GENERAL..... 4thRESPOND

RULING

11/11/2024 & 6/12/2024 N.E. MANDIA, J The application has been preferred under section 93 of the Civil Procedure Code [Cap 33 R. E 2019] herein referred as (CPC). The applicant is praying for enlargement of time to re-file a suit which was withdrawn on technical ground on 9th July, 2024 with a leave to re-file. The application is supported by affidavits deposed by the applicant Abbas Juma Mtema and Lutufyo Mvumbagu, learned counsel for the applicant and is opposed by the counter affidavits of the first respondent i Ted Frank Silkiluwasha and Kajesa Minga, land officer, in the office of Commissioner for Lands for the third and fourth respondents respectively. The application was heard by way of written submission. The applicant was represented by Lutufyo Mvumbagu, learned counsel whereas the 1st respondent enjoyed the legal services of Mr. Gilbert Masaga, learned counsel. The 3rd and 4th respondents were represented by Mr. Francis Wisdom, learned state attorney while the 2nd respondent did not appear in court nor filed any document. In support of the application, Mr. MVumbagu prayed to adopt the contents of the affidavits in support of the application to form part of his submission. The counsel submitted that section 93 of the CPC vests discretionary power to this court to enlarge or extend time for the applicant to do a certain act though the period fixed or granted may have been expired. That for the court to exercise such discretionary power, the applicant is required to assign a sufficient cause which prevented him from doing the act so ordered by the court within the underlined time. He cited the case of LYAMUYA CONSTRUCTION CO. LTD VS. BOARD OF REGISTERED TRUSTEE OF YOUNG WOMEN S CHRISTIAN ASSOCIATION OF TANZANIA, CAT, Civil Application No. 02 of 2010 2 which set the conditions to guide courts in granting applications for extension of time as follows: -

- (a) Applicant must account for all the period of delay
- (b) The delay should not be inordinate
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged
Mr. Mvumbagu submitted that the gist of the application is for enlargement of time to re-file a suit which was withdrawn with a leave to re-file. That as per the order of the court, the applicant was required to re- file the withdrawn suit by 16th July, 2024. That, the instant application was filed on 28th August, 2024, 43 days after the date the application was supposed to filed. That according to the condition set in LYAMUYA's case (supra) and as per paragraphs 5 to 9 of the applicant affidavit, the reason for the applicant's delay to re-file the withdrawn suit was occasioned by the court when mistakenly rejected the applicant's plaint filed on 15th July, 2024 for the reason of non-disclosure of the defendants' phone numbers on the online filing. That later on when the applicant tried to re-file again, 3 he could not succeed on time due to difficulties encountered in accessing court network. Mr. Mvumbagu contended further that he applied for a copy of the said order however, he could not get the same on time despite several physical follow ups until on 15th August, 2024. That, thereafter, the applicant spent 13 days to prepare and file the instant application. The counsel was of the view that he has managed to account for the days of delay as provided for in the first condition of LYAMUYA's case(supra). On the second condition, Mr. Mvumbagu submitted that the applicant's delay to file the present application was not inordinate. That the applicant spent only 43 days to get a copy of the order, preparing and re- filing of the application. He cited the case of MURTAZA MOHAMED RAZA VIRANI & ANOTHER VS. MEHBOOB HASSANALI VERSI, CAT, Civil Application No. 448/01 of 2020 to bolster his argument that the delay of 43 days was not inordinate. In respect of the third condition, Mr. Mvumbagu contended that the applicant has demonstrated high standards of diligence in handling the matter since the date when the order for re-filing the suit was issued to the date of filing the instant application. On the fourth condition, he submitted 4 that he is aware that the same is not in the context of the present application however, he prayed for the court to take into consideration substantial justice and motive upon which the application is going to serve. He was of the view that if this application is not granted, the applicant will be denied a right to be heard in respect of the intended suit, which is going to affect the claim for his land which has been trespassed by the 1st respondent. He prayed for the grant of the application with costs. Rebutting the application, Ms. Ashura, learned counsel for the 1st respondent submitted that there is no contest against the court to enlarge time fixed by it and that it is well known that the court is vested with power to enlarge time in accordance with section 93 of the CPC. She cited the case of LAURENT MARTIN VS. BERTHA JOHN GUTA, Misc. Land Case Application No. 614 of 2020, and AHMED ALLY SALIMY VS. DR. BENEDICT MBAWALA Misc. Land Application No 105 of

2022. In the latter case at pages 5, it was held that: - "Section 93 of CPC is a provision applicable to this court for extension of time where the original time was set by the court. It means that where this court or subordinate court in which the CPC is applicable set time for something to be done then it was not done within such time then an extension of time can be sought under section 93" VXXj. 5 Ms. Ashura, submitted further that it is a trite law and a well settled principle that an application for enlargement of time can be attainable only if the conditions set in LYAMUYA's case (supra) are met. That from the applicant submissions, it is crystal clear that the applicant has not accounted for each day of delay. That the applicant has admitted that he was late to refile the case for 43 days after being given 7 days by the court. Ms. Ashura contended that the court had never mistakenly rejected the applicant's application as alleged by the applicant rather it was the requirement of the law on filing a case on the online system. That it was the applicant's fault not to put the defendants phone numbers hence, blaming the court is an abuse of the courts' process. She cited the case of DAUDI PETRO KASAMBULA VS. HELENA MBOJE BAJIMU & 16 OTHERS, Misc Land Application No. 8145 of 2024 HCT, Geita Sub Registry to bolster her argument. She also cited Rule 24(5) and (6) of the Judicature and Application of Laws, (Electronic Transactions) Rules which states that: - "(5) Where the party misses a filing deadline due to technical problems referred to in sub-rule (1), the party shall move Informally and ex parte to the Registrar or the magistrate in charge not later than 15:00 hrs. of the following working day for appropriate relief. VX? 6
- (6) Where the Registrar or magistrate in charge is satisfied that there was good cause for missing the deadline, he shall grant the request under sub-rule (5) in writing. On the other hand, Ms. Ashura contended that the applicant allegation that he was yet to receive copy of the order from the court is a total lie. She was of the view that, the case was withdrawn on 9th July, 2024 and the order was issued on the same day. That the applicant letter requesting for a copy of the order was written on 16th July, 2024, 7 days after the order was issued. Ms. Ashura submitted that the contention that the applicant made follow-ups to get the order is a mere statement to waste this courts' time since he had time to do so before the lapse of the 7 days. That this proves negligence on the part of the applicant. She cited the case of BUSHIRI HASSAN VS. LATIFA LUKIO MASHAYO, Civil Application No. 3 of 2007 (unreported) where it was observed that, "a delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing periods within certain steps have to be taken" She also cited the case of BENEDICT MMELLO VS. BANK OF TANZANIA, Civil Appeal No. 12 of 2002 CAT (unreported) at pages 5- 6 where it was stated that: - 7 "It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause." Ms. Ashura contended further that the applicant had failed to account for each day he delayed to re-file the case and he also failed to consult the technical team of the Registrar to give him a letter to waive filling online procedures. She was of the view that the applicant has shown sloppiness on his part in making follow-ups to obtain the order on time and he is using the courts' favor to re-file the same out of the

deadline. She prayed for the application to be dismissed with cost. Likewise, Ms. Ashura submitted that the delay by the applicant was inordinate. That the case of MURTHAZA (supra) is distinguishable and is not applicable in the circumstance of the instant application. That in MURTHAZA (supra) case, it was the mistake of the court to stamp only one document and not of the applicant or his advocate. That 43 days are inordinate since the applicant had time to refile his case on time. The counsel contended further that the applicant affidavit clearly indicated that he was not diligent in his action, and due to his negligence he failed to account for each day of delay. That it is trite law that negligence of the applicant or advocate is not a sufficient reason for the court to enlarge or extend time. She cited the case of EXIM BNK (TZ) LTD V. JACGUILENE A. KWEKA, Civil Application No. 348 of 2020 (unreported) to bolster her argument. Ms. Ashura submitted that there is nowhere the applicant has stated existence of any illegality in the court's order or existence of any point of law of sufficient importance that warrants grant of orders of enlargement of time. That failure to show the existence of any point of law that warrants grant of this order make the application incompetent. She prayed for the application to be dismissed with costs. Joining hand with the 1st respondent, Mr. Wisdom, prayed to adopt the content of his counter affidavit to form part of his submission. He submitted that the applicant has not shown any illegality of the impugned ruling, point of law, nor accounted for all the period of delay as required by the applicable law. He referred at page 3 of the applicant's submission that he delayed for 43 days in filing the application. Mr. Wisdom cited the case of MOHAMED SALIMINI VS. THE ASSISTANT REGISTRAR OF TITLES AND 2 OTHERS Civil Reference No. 12 of 2021 at page 14 held that 9 " .. and as correctly argued by the learned counsel for the Respondents, the Court has a duty to analyze the reasons for the delay narrated in the Applicant's Affidavit in support of the Application and determine as to whether the same are good reasons warranting grant of extension of time". That according to paragraph 5 of the applicants affidavit, the applicant's attempted to account for the days of delay on reason that the suit was mistakenly rejected by the court for failure to provide phone numbers of the defendants and later on the same was filed but the same could not be accomplished timely due to network complication. Mr. Wisdom submitted that this is negligence on the part of the applicant because the system itself demands filing in the details of the defendants including phone numbers as per Order VII Rule 1 (c) of the CPC. That, the applicant's failure to adhere to the requirements is negligence which the applicant should not benefit from and is not a good cause. Mr. Wisdom reiterated the submission made by Ms. Ashura with regard to Rule 24 (5) and (6) of the Judicature and Application of Laws (Electronic Filing) Rules,

2018. That failure to follow the requirement of said rule shows that the applicant was not diligent in taking necessary action for his case. On the allegation that on 16th July 2024, applicant wrote a letter requesting to be supplied with a copy of the order with a view to file the instant application, Mr. Wisdom submitted that the applicant waited copy of the order unnecessarily because the same was not a crucial document that could hinder the applicant from making the present application. He cited the case of MOHAMED SALIMINI VS. THE

ASSISTANT REGISTRAR OF TITLES AND ANOTHER Civil Application No. 31103 of 2021 where it was held that: - "As pointed out by the Counsel for the respondents, it is hard to fathom why the time spent to wait for the order granting leave to appeal should be considered a good cause in the current Application. This is because even with that order on hand it does not in any way add value to- or a necessary appendage to the current application". On the applicant narration in paragraph 7 of the affidavit that he spent 7 days to prepare and file the instant application, Mr. Wisdom submitted that 7 days were unnecessarily long to prepare an application of this nature. That the applicant has not accounted on what was done in each day of preparation and it was not enough to narrate rather to give an account of each day of the delay. That the applicant's affidavit contains false evidence because the applicant stated that he spent 7 days in preparing this application but the affidavit in support of the application reveals that the application was prepared within 4 days hence, the delay is inordinate and should not be allowed in any way. He submitted that the application is devoid of merits for failure to meet the criteria set in LYAMUYA's case (supra) and therefore the same should be dismissed with costs. After going through the rival submission of both counsels, the pertinent issue for determination is whether the applicant has adduced sufficient cause to be granted enlargement of time. Section 93 of the CPC provides that: "93. Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. [Emphasize added] It is trite law that grant of enlargement of time is a discretion of the court which need to be exercised judiciously upon adducing sufficient cause as provided for in LYAMUYA's case (supra). In the instant application, the applicant admitted that he delayed to file the application for 43 days blaming the court that it rejected his application for failure to provide the phone numbers of the defendant, and that a copy of the order for re-filing the suit was not provided to him in good time. It is on record and not disputed that on 9th July, 2024 the court 12 withdrawn Land Case No. 6349 on technical ground with leave to refile the same on or before 15th July, 2024. It is also on record that the application was filed on 28th August, 2024, after lapse of 43 days from the date the application was supposed to be filed. It is trite law that the applicant was supposed to give an account of each day of delay. In giving such an account the applicant contended that he tried to file the suit on 15th July, 2024 but it was mistakenly rejected by the court for the reasons stated earlier. That even when the applicant tried to refile it again he could not succeed due to difficulties encountered in accessing the court network. The applicant went ahead that the delay was also occasioned by failure to get a copy of the order timely. That the order was supplied to him on 15th August, 2025 and thereafter he spent only 13 days to prepare and file the application. In his view, he has managed to account for each day of delay as provided for in LYAMUYA's case (supra). The applicant found comfort in the case of MURTAZA MOHAMED RAZA VIRANI & ANOTHER VS. MEHBOOB HASSANALI VERSI, (supra). On the contrary both counsels for defence disputed that the applicant has failed to account for each day of delay as he admitted to delay for 43 days. It was the defendant's contention that the court had never 13 mistakenly rejected the applicant's application

rather it was the requirement of the law on filing a case on the online system to put the defendants phone numbers. It is my considered view and as rightly submitted by both defence counsels that Rule 24 (5) and (6) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 requires the party who misses a filing deadline due to technical problems to go informally and ex parte to the Registrar who upon being satisfied that there was good cause for missing the deadline, should grant the request. On this note, I do not see why the applicant did not use this avenue to file his application instead of throwing blames to the court. It is certain that the applicant has failed to account for each day of delay that why he chose to blame the court. On the allegation that the applicant was not supplied with a copy of the order in good time, I am of the settled view, as rightly submitted by Mr. Wisdom that the applicant waited copy of the order un-necessarily because it was not a crucial document that could hinder the applicant from making the present application. I am moved by the holding in the case of MOHAMED SALIMINI VS. THE ASSISTANT REGISTRAR OF TITLES AND ANOTHER (supra) that: - 14 "it is hard to fathom why the time spent to wait for the order granting leave to appeal should be considered a good cause in the current Application. This is because even with that order on hand it does not in any way add value to or a necessary appendage to the current application". [Emphasize added] It is my considered view that the reason adduced by the applicant cannot suffice for a grant of an enlargement of time. It is awkward even to think that the applicant was pursuing the said case with the required standard of zeal and diligence. It is correct as submitted by counsels for the respondents that the applicant was not diligent, rather he was sloppy and negligent that he slept on his right and by the time he was awake he thought of obtaining mercy from this court. I also do not think if it was appropriate for the applicant to blame the court after his delay of 43 days. I did not see the reason or an account given by the applicant to substantiate what was being done on each day from preparation and filling of the suit since the day the order was issued. I expected the applicant to tell this court what was going on from 9th July, 2024 when the suit was withdrawn to 28th August, 2024 when the application was filed. I am moved by the holding in the case of BUSHIRI HASSAN VS. LATIFA LUKIO MASH AYO case (supra) where it was observed that, 15 "a delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing periods within certain steps have to be taken" It is therefore my observation that the application is devoid of merits for failure to meet all the criteria set in LYAMUYA's case (supra). It is on that observation, I find that the applicant has failed to account for each day of delay for all the 43 days of delay from 9th July, 2024 when the order to refile was issued to 28th August, 2024 when this application was filed. I am also of the settled view that the applicant has failed to adduce sufficient cause for this court to enlarge time to file the intended suit out of time Consequently, this application is dismissed with costs. N.E MANDIA JUDGE 06/12/2024 16

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