

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM MISC. LAND APPLICATION NO. 25070 OF 2024 (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 LTD..... 3rd RESPONDENT NGABANI PATRICK MTENGA..... 4th RESPONDENT

RULING

15th to 22nd November, 2024 E.B. LU VAN DA, J The Applicant is seeking extension of time to enable them file an application for restoration of the above captioned matter. In the affidavit in support of the application, the Applicant stated that she was granted with extension of fourteen days to file an application for restoration. That she failed to utilize fully the fourteen days for reason that she was nursing her husband who is ageing with poor health condition suffered from catastrophic illness. That she complied for filing restoration, but was erroneously filed in the Hight Court of the United Republic of Tanzania sub registry instead of the High Court of the United Republic of Tanzania (Land i Division). That after the application was wrongly filed, the Registrar of the High Court returned it with endorsement "file at the Land Division" annexure An3. That it was not intentional to file an application for restoration of the above captioned matter to a wrong court, pleaded being a human error. That the Respondent raised an objection that the application was time barred for being filed out of the time prescribed in the court order, as a result it was strike out, citing ruling annexure An4. In the counter affidavit, the Respondent stated that the Applicant failed to file the application for restoration as per the order of the Court. That the Applicant ought to file an application for extension of time after rejection of the said application, instead decided to contest the preliminary objection, thereby the application was strike out. That the Applicant failed to account from 27/03/2024 when she was granted fourteen days to the present. That the Applicant failed to state as to when she became aware of the rejection by the Registrar. That in Misc. Land Application No. 25931 of 2023 this Court granted the Applicant an extension of fourteen days on the reason of technical delay due to filing in a wrong forum, but the Applicant repeated the same issue while knowing that she was filing in a wrong forum and decided to knock the door of this Court with the same reasons. That the Applicant remained idle for two months from 7/08/2024 to 7/10/2024 when she preferred this application.

That the Applicant 2 shall be required to account each and every day of delay from 7/10/2024 to 7/10/2024 (sic). In the submission in chief, the Applicant adopted contents of the affidavit in support of the application. In reply, Mr. Cleoplace James learned Counsel for Respondent reiterated his argument that the Applicant has failed to account each day of delay from 27/3/2024 to 09/4/2024 when she filed in a wrong court. He submitted that failure by the Applicant to comply with the court order dated 27/03/2024 is purely negligence on her party. He submitted that the Applicant was granted extension of time on account of filing in a wrong form, argued re-filing in a wrong forum again is negligence of the Applicant and this court should not condone. He cited *Ms. Speed Security Limited vs Hussein Abdallah Kaniki & Another*, Civil Application No. 142/12 of 2023, CAT. Arguably on 27/03/2024 the Applicant was granted fourteen days to file restoration, which order was made vide Misc. Land Application No. 25931 of 2023, at page three, it was held, 'To my view, this amount to technical delay, where the Applicant was busy fighting for recourse in pursuit of her right to a wrong forum. Therefore the delay is not inordinate one' 3 Annexure An3, indicate the date of the submission of the documentations was on 9/4/2024, meaning that the Applicant submitted for filing to a wrong forum on the last date of filing, to wit on the fourteenth day reckoning from the date of grant on 27/03/2024. The reason for delay, is that the Applicant was nursing her husband who is ageing with poor health condition suffered from catastrophic illness. In the counter affidavit, the Respondent challenged this factual deposition for want of medical chit. However, on the balance, I rule it as having been established to the satisfaction of the Court. The Respondent faulted the Applicant to have failed to account a period of two months from 7/08/2024 to 7/10/2024 when she preferred this application. Certainly true, but annexure An3 indicate as if the notification remained pending for two months, as it reads two months ago, meaning it might have been accessed or printed by the Applicant after expiry of two months. Again, as queried by the Respondent, the Applicant did not state as to when exactly she was acquainted with a memo from the Registrar returning her documentation on account of filing to a wrong Registry. Irrespective of the above adumbration, still convention wisdom dictates me to afford the Applicant a last chance, on condition that she will pay a sum between TZS 400,000 and TZS 800,000 to the Respondent for she is occasioning unreasonable inconvenient of filing her documentations to a wrong Registry, at 4 a final minutes without making close follow up of directives from the Registry, as to whether the same were cleared for admission procedures or not. This order is made under the provision of Order IX rule 7 (sic, 6(1) Civil Procedure Code, Cap 33 R.E. 2019, cited as enabling provision by the Applicant. The question as to whether the Respondent will be entitled to the minimum or ceiling or any amount in between the minimum and ceiling, will fall within the domain of the taxing officer. The Applicant is granted fourteen days to file the restoration, which will count from the date hereof. 5

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