

TANZANIA / JUDGMENT

FATUMA AMIRIII TANZLII

COURT
TANZLIIDECIDED
6 March 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB-
REGISTRY AT DAR ES SALAAM MISCELLANEOUS CIVIL APPLICATION NO 2586 OF 2025
FATUMA AMIRI APPLICANT VERSUS SHABANI HUSSEIN
AMBARI RESPONDENT KHATIBU HUSSEIN AMBARI
RESPONDENT

RULING

3rd & 6th March 2025 MKWIZUJ The applicant is in court seeking an extension to apply to set aside a dismissal order issued by Maghimbi J. The players in the chamber summons are as follows:

1. The Honourable Court would be pleased to extend the time the applicant may apply for an order to set aside the dismissal order dated 26th May 2023 before Hon. Maghimbi,J in Civil Appeal No. 50 of 2019. 1
2. That upon setting aside the dismissal order, the Honourable Court be pleased to restore PC Civil Appeal No. 50 of 2019 for the continuation of hearing inter-parties.
3. costs be provided for.
4. Any other order(s) or reliefs as the court may deem just and fit to grant When the matter came for hearing , Mr Evance Lazaro, Advocate H/B for Mugisha Paschal, for the applicant with leave to proceed, while the respondents were all in person without any legal representation, Mr Lazaro's submissions were short but focused. He adopted the chamber summons, the supporting affidavit, and all the attachments, stressing that the delay was due to sickness and not dilatory actions by the applicant. He urged the court to grant the application. The first respondent opposed the application. He said the applicant had been drugging them in court and had been filing several applications, one handled by Kulita J and another by Ismail J before it was dismissed by Maghimbi J and now before this court. The 2nd respondent supported the application, so he had no more to tell the court. It is an established principle that requests for extensions of time are granted sparingly, dependent on the demonstration of good cause. So the 2 main issue for determination is whether the applicant has shown good reason for this Court to exercise its discretion in granting the application for extension of time. In Wambele Mtumwa Shahame vs. Mohamed Hamis,Civil

Reference 08 of 2016 [2018] TZCA, Court of Appeal said: "The position of an application for extension of time is entirely different from an application for leave to appeal. He is concerned with showing "sufficient reason" for why he should be given more time, and the most persuasive reason he can show is that the delay has not been caused or contributed to by dilatory conduct on his part. But there may be other reasons, and these are all matters of degree. (emphasis added) So far, there is no hard and fast rule regarding what amounts to reasonable cause, but the courts have invariably considered certain factors to constitute good cause. In the case of Tanga Cement Company Ltd v. Jumanne D. Masangwa & Another, Civil Application No. 6 of 2001, the Court stated thus: "What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the application." And in Lyamuya Construction Company Ltd versus the Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 good causes were expounded to encompass a lucid explanation for the delay, an assessment of the duration of the delay, a thorough examination of the applicant's diligence in pursuing the matter, and, where applicable, an inquiry into any potential illegality inherent in the impugned decision. I have consciously considered the applicant's affidavit. The deponent articulated profound dissatisfaction with the ruling of the Ilala Primary Court in Probate Cause No. 88 of 2016, prompting an appeal to the District Court of Ilala, designated as Civil Appeal No. 57/2018. On January 22, 2019, the District Court, under the stewardship of Hon. Sanchore, RM, upheld the Primary Court's decision, as detailed in the attached Annexure F1. Subsequently, the deponent pursued further recourse by appealing to the High Court of Tanzania at Dar es Salaam under PC Civil Appeal No. 50/2019. Unfortunately, this appeal faced dismissal on October 19, 2020, for want of prosecution owing to the absence of the applicant's legal representation. However, in a later ruling by Hon. Ismail J. on Misc. Civil Application No. 632 of 2021, the High Court restored the appeal following notification of the untimely death of the deponent's advocate, as indicated in Annexure F2. The court then scheduled a hearing for April 11, 2023, with written submissions mandated; regrettably, the newly engaged advocate failed to meet the submission deadline, resulting in another dismissal due to non-appearance. The medical report attached to the affidavit Annexure F3 shows that throughout this period, spanning 619 days, the deponent's challenges were exacerbated by significant health issues, including polyneuropathy, osteoarthritis in both knees and spondylosis, which necessitated extensive rest and ongoing medical treatment since 2019. Despite efforts to engage legal counsel, including a lawyer in 2020 who subsequently passed away and another advocate who likewise failed to attend the scheduled hearings, the deponent says she faced further dismissals of the case, the details of which are captured in Annexure F4. Thus, the deponent maintains that the failure to appear on April 11, 2023, was not a result of negligence or inaction but rather a direct consequence of ongoing and debilitating health challenges. Beyond the historical context of the matter, the applicant has not provided a sufficient or specific explanation for the substantial delay in applying to set aside the dismissal order. According to the court records availed before this court through parties'

affidavits and submissions, the appeal was dismissed by Hon. Maghibi J. on May 26, 2023. However, this application was only submitted on February 4, 2025, in almost 21 months between the dismissal and the filing. Alarming, the affidavit supporting this application fails to explain the reasons for this significant delay. The medical report attached as Annexure F3 lacks the necessary specificity and detail to substantiate the applicant's claims. It is overly general and does not clearly outline the applicant's activities or circumstances during the intervening period from May 26, 2023, to February 4, 2025. There is no mention of whether she sought medical treatment during that time or if any health concerns directly impeded her ability to act. In *Juto Ally v Lucas Komba & Another*, Civil Application No 484/17 of 2017(unreported) w the Court of Appeal held that: - "Where the applicant's cause of delay is due to illness, must show that illness contributed to the delay as opposed to a general statement." The decision means applicants must provide specific evidence that their illness directly caused delays; this should include details about the illness, its impact, medical treatments received, and how these factors specifically hindered their ability to apply on time. A vague reference to being unwell is insufficient and does not meet the requirement to account for the delay. It is settled that in an application for an extension of time, the applicant must provide an account for each day of the delay. The authorities of the Court to that effect are many; one of them includes *Hassan Bushiri v. Latifa Lukio Mashayo*, Civil Application No. 3 of 2007 (unreported), where the Court stated: "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". The applicant's application has failed to meet the threshold warranting the court to grant the extension sought. The Application is hereby dismissed with costs. It is so ordered. Dated at Dar es Salaam, this 6th Day of March 2025 7 E. Y Mkwizu Judge 8

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