

TANZANIA / JUDGMENT

Misc

COURT
TANZLIIDECIDED
24 June 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LAND DIVISION (AT DAR ES SALAAM) Misc. Land Application No. 22699 of 2024 JUDITH DOMINIC KIHAMPA.....APPLICANT VERSUS KCB BANK TANZANIA LIMITED.....1STRESPOND ROADMIX TANZANIA LIMITED.....2NDRESPOND WALLECY MOHAMEDI BROWN.....3RDRESPOND

RULING

Date of last Order: 2/12/2024 Date of Ruling: 10/12/2024 LALTAIKA J, This is a Ruling on an application for extension of time to file an application for setting aside a dismissal order issued in Miscellaneous Land Application No. 13372 of 2024, dated 24th June 2024. The Applicant is seeking indulgence under Section 14 of the Law of Limitation Act, Cap 89 R.E. 2019, which permits this Courts to extend time for sufficient cause. Page 1 of 9 The Application was argued by way of written submissions as per the following order: Applicant's submission in Chief was to be filed on or before: 13/11/2024, Respondent's Reply was to be filed on or before: 25/11/2024, Applicant's Rejoinder if any was to be filed on or before: 2/12/2024 Mention to set the date of Ruling: 2/12/2024 at 10:00. The Applicant and the 4th Respondent enjoyed the skilful legal services of Ms. Kashindye Thabit and Mr. Paschal Kamala, learned Advocates, respectively. They deserve commendations for spotless compliance with the ordered scheduled. The next part of this Ruling is, in that order, a summary of submissions by both parties, my analysis of the law and the verdict. Ms. Thabit stated that the application was brought under sections 93 and 95 of the Civil Procedure Code, Cap 33 R.E. 2024, and section 14(1) of the Law of Limitation Act (supra). She highlighted that the application was supported by an affidavit sworn by one Judith Dominic Kihampa. Before delving into the merits of the application, Counsel provided a factual background leading to the present application. She explained that the Applicant had initially been the applicant in Miscellaneous Land Application No. 13372 of 2024, which was dismissed for want of prosecution on 24th June 2024 due to the non-appearance of the Page 2 of 9 Advocate on more than three occasions. Aggrieved by this dismissal order made by Judge Msafiri, Ms. Thabit narrated, the Applicant intended to file an application to set aside the dismissal order. On 10th July 2024, averred Ms. Thabit, the Applicant filed Miscellaneous Land Application No. 16155 of 2024, which was assigned to Judge Hemed, along with Land Case No. 15966 of 2024. During the first appearance, Ms. Thabit recalled, the Respondent's counsel raised a preliminary objection on

the ground that the matter was *res judicata*. The Applicant conceded and withdrew the application, obtaining liberty to refile. Consequently, Ms. Thabit argued, on 13th August 2024, Miscellaneous Land Application No. 16310 of 2024 was filed before Judge Msafiri. However, on 17th July 2024, the Respondent's counsel raised another preliminary objection, arguing that the application was time-barred. The Applicant conceded and opted to file an application for an extension of time, leading to the present filing on 6th September 2024. Ms. Thabit submitted that it is a well-established principle of law that delays resulting from time spent pursuing justice in good faith within court corridors constitute excusable delays. She referred to the case of *Omary Ally Nyamalege (As the Administrator of the Estate of the Late Seleman Ally Nyamalege) & 2 Others v. Mwanza Engineering Works*, Page 3 of 9 Civil Application No. 94/08 of 2017, Court of Appeal of Tanzania at Mwanza (Unreported) to buttress her arguments. Counsel emphasized that the delay in filing the present application was excusable since the Applicant had diligently spent time pursuing justice. She argued that denying the extension of time under these circumstances would result in injustice to the Applicant. Highlighting the discretionary powers of the Court to grant an extension of time, Counsel contended that such discretion must be exercised judiciously and that the party seeking this relief must demonstrate good cause. She cited the case of *Mumello v. Bank of Tanzania* [2006] TLR 227, to support her argument. Ms. Thabit also addressed the element of illegality, referring to the case of *VIP Engineering and Marketing Limited and Three Others*

v. *Citibank Tanzania Limited*, Consolidated Civil Reference No. 6, 7, and 8 of 2006, Court of Appeal of Tanzania, where it was held that illegality in a decision being challenged constitutes sufficient reason for granting an extension of time. She argued that the Applicant's case involved such issues of illegality, necessitating an extension of time to rectify the matter. Mr. Kamala, Counsel for the 4th Respondent, referenced the decision in *Lyamuya Construction Co. Ltd v. Board of Registered Page 4 of 9 Trustees of Young Women's Association of Tanzania*, Civil Application No. 02 of 2010 (unreported), which established the following principles for granting an extension of time:

1. The Applicant must account for every day of delay.
2. The delay should not be inordinate.
3. The Applicant must demonstrate diligence and avoid negligence or sloppiness.
4. Other sufficient reasons may include the existence of a point of law of significant importance, such as the illegality of the decision being challenged. Counsel proceeded to argue against the application in line with each of these criteria. I will proceed to summarize his arguments as hereunder. Mr. Kamala emphasized that the Applicant failed to account for each day of delay, as required by the principles in the *Lyamuya Construction* case. He also cited *Bushiri Hassan v. Latifa Lukio Mashayo*, Civil Application No. 3 of 2017 (unreported), where the Court of Appeal stated that even a single day of unexplained delay invalidates the application. He noted that the relevant timeline included a failure to explain delays totalling 73 days, with specific unexplained gaps from June 24, 2024, to September 6, 2024, and

shorter periods thereafter. He argued Page 5 of 9 that explanations for these delays were absent from the Applicant's affidavit and thus could not be considered, as courts cannot rely on statements made from the bar. On inordinate delay, Mr. Kamala argued that the disputed dismissal order was issued on June 24, 2024, but the application was not filed until September 6, 2024, 44 days beyond the statutory limit of 30 days under Item 4, Part III of the Schedule to the Law of Limitation (Supra) Citing the Lyamuya Construction case, once again, Mr. Kamala asserted that the Applicant demonstrated apathy, negligence, and sloppiness in prosecuting her case. He referred to Order IX Rule 6(i) of the Civil Procedure Code, Cap. 33 R.E. 2022, to argue that the Applicant and her Counsel's errors and ignorance of procedural law led to unnecessary delays. He further relied on Ramadhani Rashidi Kitime v. Anna Ally Senyangwa, Misc. Land Application No. 3 of 2023 (unreported), where the Court held that the negligence of an advocate does not constitute sufficient cause for an extension of time. Regarding a point of law, Mr. Kamala contended that the Applicant failed to identify any significant point of law or illegality worthy of the Court's attention. He noted that illegality must be apparent on the face of the record, as held in Principal Secretary, Ministry of Defence Page 6 of 9 and National Service v. Devram Valambia [1992] TLR 185, and elaborated in Jeremia Mugonja Eyembe v. Hamisi Selemani, Civil Application No. 44008 of 2020 (unreported). Mr. Kamala also observed that while the Applicant had mentioned illegality in her submission and cited unrelated cases, these allegations were not pleaded in the affidavit. He referred to Maulid Ngowengo & 3 Others v. General Manager, Sonia Industries Ltd., Misc. Civil Application No. 305 of 2023 (unreported), which underscored the importance of pleading illegality to draw the Court's attention. He maintained that the application lacked merit and urged the Court to dismiss it accordingly. I have dispassionately considered the rival submissions and thoroughly examined the referenced affidavits and other documents. The law, as articulated in Lyamuya Construction (Supra), establishes four guiding principles for granting extension as meticulously expounded on by Mr. Kamala. Apparently, the Applicant did not specify the exact date when the application was filed, and the court record lacks an endorsement to confirm receipt. Assuming the affidavit's sworn date of 6th September 2024 represents the filing date, this implies a delay of 73 days from the dismissal order. Page 7 of 9 The Applicant failed to explain the gap between 24th June 2024 and 6th September 2024. Further, there was no explanation for the specific delays of: 16 days between 24th June 2024 and 10th July 2024 and 4 days between 2nd September 2024 and 6th September 2024. This failure contradicts the requirement to account for each day of delay, as emphasized in Bushiri Hassan (supra). The Applicant's affidavit revealed instances of procedural missteps, including filing a fresh application while aware of the dismissal order. The court agrees with the Respondent that this demonstrates negligence rather than diligence. Moreover, the Applicant's affidavit failed to plead illegality explicitly. I agree with Mr. Kamala that Submissions from the bar cannot substitute the affidavit. Even if considered, the alleged illegality was neither apparent on the face of the record nor demonstrated to be of sufficient importance. In the upshot, the application is hereby dismissed for lack of merit. Costs shall follow the event. It is so ordered. E.L LALTAIKA JUDGE 10/12/2024 Page 8 of 9 Court: Ruling delivered in Court Chambers this 10th day of

December 2024 in the presence of Ms. Hosiana Fabian, learned Advocate, holding brief for Ms. Kashindye Thabit, learned Advocate, Counsel for the Applicant and in the absence of Respondents. Page 9 of 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/323358/source_file/b8a5e9f9cb5a080b/Misc_Land_Application_No._22699_scnd_11.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/judith-dominic-kihampa-Extensionoftime-tanzlii-2024--6a3ea5243b1caa912981a098

Prepared on 14 October 2026 · Esheria