

TANZANIA / JUDGMENT

KCB BANK SCANNED

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3 December 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND CASE APPLICATION NO.23077 OF 2024 KCB BANK TANZANIA
LIMITED..... APPLICANT VERSUS JUDITH DOMING
KIHAMPA..... 1stRESPONDEN ROADMIX TANZANIA
LIMITED..... 2ndRESPONDEN WALLECY MOHAMED
BROWN.....3rdRESPONDEN

RULING

29h November, 2024 & 3rd December, 2024 L. HEMED, J On 12th August 2024 Land Case No. 15966 of 2024 was called for 1st Pretrial conference. The herein Applicant failed to enter appearance without notice. As it was found that the Applicant herein had knowledge of the matter on the particular date, the court proceeded to strike out its pleadings pursuant to Order VIII Rule 20(1) (b) of the Civil Procedure Code [Cap.33 R.E 2019]. The first Pretrial conference was conducted amongst the respondents herein. In the course of the pretrial conference, it was found that parties who were present on the particular date had no i conflicting interests over the suit landed property. In that regard, the court directed for hearing of the matter. In an attempt to let the orders vacated, the Applicant lodged the instantaneous application on 17th September 2024 under section 14(1) of the Law of Limitation Act [Cap.89 RE 2019], sections 3A, 3B, 95 and Order VIIIB Rule 20(1)(b), (2) of the Civil Procedure Code {supra) seeking for the following orders:- "(72 That this Honourable Court be pleased to issue an order for extension of time within which the Applicant may file an application to set aside an order of this court dated 12h August 2024, striking out the written statement of defence of the Applicant herein and 1st Defendant in Land Case No. 15966 of2024. (ii) That subject to and or having granted an order for extension of time the Honorable Court be pleased to set aside orders made...on the 12th August 2024 striking out the written statement of defence of the 1st Defendant in Land Case No. 15966 of2024 and restore the same. (Hi) Costs for this application be in the cause. (iv) That the Honorable Court be pleased to make any other order(s) it deems fit andjust to grant." The application has been supported by the affidavits of Eric Kanga and Grace Kamala. The respondents could not file counter affidavits. This implies that they are not resisting the application. When the matter was called for hearing on 28th September, 2024 the learned counsel for the Applicant prayed for hearing be by way of written submissions. The Applicant managed to file submission in chief but the respondents who ought to have argued the application only on matters of law could not file any submissions. This

ruling therefore, is based only on the affidavits and submission filed by the applicant to support the application. Mr. Eric Kanga, learned advocate is the one who presented the submissions on behalf of the Applicant. Mr. Kanga urged the court to apply its discretion powers to grant the application relying on the decisions of the Court of Appeal in Tanga Cement Company v. Jumanne D. Masangwa and Another, Civil Application No. 6 of 2001, and Praygod Mbaga v. Government of Kenya Criminal Investigation Department and Another, Civil 3 Reference No 4 of 2019. Generally, in his submissions, the counsel for the Applicant has asserted that the Applicant became aware of its written statement of defence being struck out on 4th September 2024. On the same date he applied for the copy of the order which was supplied to the Applicant on 10th September, 2024 and filed the instant application on 17th September 2024. In his view the whole period of the delay has been accounted for. In regard to the failure of the Applicant to appear on the date fixed for first pre-trial conference, the counsel for the Applicant has submitted that he came to court with his assistant on the fateful date save that he could not hear when the matter was called. According to what have been deposed in the affidavits to support the application, the advocate of the Applicant was misinformed by the advocate of one of the respondents herein that the matter was to proceed for mediation. Having carefully gone through the affidavits and submission in support of the application, the question for determination is whether the application is meritorious. Let me start with the first prayer for extension of time for the Applicant to set aside the impugned order. The 1st prayer is 4 governed and indeed it has been brought under section 14(1) of the Law of Limitation Act [Cap.89 R.E 2019] which provides thus: - "Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application...and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application." [Emphasis added] The above provision envisages that for a person to succeed in an application/prayer for extension of time, reasonable or sufficient cause for the delay must be demonstrated. However, the words 'reasonable' or 'sufficient cause' have not been defined by any statute including the Law of Limitation Act {supra} itself. Therefore, extension of time falls within the discretion ambit of the court. In Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010 the Court of Appeal of Tanzania 5 went further to lay down guidelines in determining applications for extension of time. The said guidelines are as follows: - "(a) The 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." In the present matter, the Applicant's advocate has contended that he was misinformed by the advocate of the 1st Respondent that the matter would have been called for mediation on 4th September, 2024, however, when he came to court premises for mediation on the

particular date is when he discovered that the matter was coming for hearing and that the Applicant's defence had been struck out. Immediately after such discovery he applied for copies of impugned order which was supplied to him on the 6 10th September, 2024 and eventually, on 17th September, 2024 presented the instant application. Going through the affidavit in support of the application and the submission made thereof, I find that the Applicant has managed to account for the delay. Additionally, I have noted that the delay was not inordinate as the Applicant was quick to react after the discovery of the impugned order. This being the case, I find the prayer for extension of time deserves to be granted. Let me turn to the prayer to set aside orders made on the 12th August 2024 striking out the written statement of defence. In respect to the said prayer, the learned advocate of the Applicant has asserted to have attended the matter on the fateful date, that is on 12th August 2024, only that while in the court premises, he could not hear when the same was called. The assertion of Mr. Eric Kanga has been supported by the depositions of Ms. Grace Kamala. It should be noted that the affidavits deposed to support the application have not been countered by the respondents. Failure to counter the facts deposed in the affidavits is as good as having admitted them. In this matter, I do not find any ground to prevent the court to believe what have been deposed in the affidavits to support the application. In that regard, good cause has been demonstrated to grant the prayer to set aside the order dated 12th August 2024. In the final analysis, I find this application worth to be granted. I proceed to make the following orders:-

1. The dismissal order in Land Case No. 15966 of 2024 dated 12th August 2024, vacated;
2. The written statement of defence of the 1st Defendant in Land Case No. 15966 of 2024, restored;
3. Each party to bear its own costs. Order accordingly. DATED at ^R^SAIAAm thi December, 2024 JUDGE 8

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Prepared on 14 October 2026 · Esheria