

TANZANIA / JUDGMENT

PAULO AMI TLOMA vs PAULO KWASLEMA DUKHO EDITED22222

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB REGISTRY OF MANYARA AT BABATI MISC. Civil APPLICATION NO. 14043 OF 2024. {Arising from Land Appeal No. 43 of 2023 in the High court of Tanzania Manyara Sub Registry at Babati). PAULO AMI TLOMA..... APPLICANT VERSUS PAULO KWASLEMA DUKHO..... RESPONDENT

JUDGMENT

24th July & 27th August, 2024 Kahyoza, J.: Paulo Ami Tloma (the applicant) instituted an application for leave to apply to set aside the dismissal order out of time. The applicant alleged that he delayed to apply to set aside the dismissal order because he fell sick. The application was instituted against Paulo Kwaslema Dukho (the respondent). The respondent did not file a counter affidavit to oppose the application. The issue is whether the applicant has adduced sufficient reason for delay. i A brief background is that; Paulo Ami Tloma (the applicant) instituted an appeal and prayed to argue the appeal by way of written submission. The Court (Magoiga J.) granted the prayer and set down a schedule for the parties to file their submissions. The applicant defaulted to file the written submission as ordered. Following the applicant's failure to file the written submission, this Court (Magoiga J.) dismissed the appeal for want prosecution. The appeal was dismissed in the presence of Paulo Ami Tloma, the applicant, and Paulo Kwaslema Dukho, the respondent on 21. 2. 2024. On 13.6.2024, Paulo Ami Tloma (the applicant) filed an application seeking for leave to file an application to set aside the dismissal order out of time. Paulo Ami Tloma's affidavit demonstrates one reason for delay, that is illness. Paulo Ami Tloma deponed that he was admitted at Mbulu District Hospital on 25 February 2024 and discharged on 22 March 2024 as per his affidavit. Paulo Ami Tloma filed his application for extension on 13.6.2024. As the record bears testimony, Paulo Ami instituted an application for the extension after 113 days from the date of the dismissal order or 83 days from the date when he was discharged from Mbulu hospital. The 2 applicant advanced only one ground for delay that he was prevented by illness to apply to set aside the dismissal order on time. There is no doubt that illness is ground for delay. Thus, once a person proves that ill health prevented him to take legal action, that amounts to a good cause for delay. See Emanuel R. Maira vs The District Executive Director of Bunda, Civil Application No. 66 of 2010 (unreported), where it was held that: "Health

matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike." Illness to amount to a ground for extension of time, the applicant must explain how sickness delayed him to take legal action. I wish to refer to Shefire Vs. Omary Ally [1992] TLR 245, where the Court of Appeal upheld the decision of the High Court that- '77/ health without elaboration cannot be good ground for extension of time after delay of five months." Paulo Ami averred in his affidavit that he fell sick and he was admitted at Mbulu district hospital on 25. 2. 2024 and discharged on 22.3.

2024. The applicant did not prove how sickness prevented him from taking legal action. Since the applicant alleged that he was bedridden from on 25. 2. 2024 to 22.3. 2024, which the respondent did not oppose, I take 3 it that he was unable to take legal action from the hospital bed. Illness is a good ground for extension of time so, the period of delay from 25. 2. 2024 when the applicant was admitted to 22.3. 2024 when he was discharged is excusable. The applicant is not to blame for failure to take legal action where he was hospitalized. The applicant was discharged on 22.3. 2024 and filed the instant application on 13.6.2024, that is 83 days from the day of his discharge. The applicant did not account for 83 days of delay. He did not explain why he could not institute the current application immediately after he was discharged from hospital and do so after 83 days had expired. It is settled that a person applying for extension of time should account for all period of delay if, he is to succeed. The Court of Appeal in Wambura NJ Waryuba v. The Principal Secretary Ministry of Finance & Another (Civil Application 225 of 2019) [2020] TZCA 357 held that- "To be sure, it is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application." Paulo Ami did not account for period of delay from date of discharge to the date he instituted the current application, that is he did 4 not account for 83 days of delay. For that reason, the application for extension of time is bound to fail. In the upshot, I find that the applicant has not adduced sufficient reason(s) for extension of time. Consequently, I dismissed the application for want of merit with costs. I order accordingly. DATED at Babati this 27th day of August, 2024. Court: Ruling delivered in the virtual presence of the parties. B/C Fatna (RMA) present. J.R. Kahyoza Judge 27/8/202 5

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