

TANZANIA / JUDGMENT

SARGENT RULING

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12 July 2024

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUB-REGISTRY OF MWANZA AT MWANZA CIVIL APPLICATION NO. 9393 OF 2024 (Arising from the decision of the High Court in Civil Case No.15 of 2023 before Kamana J) SARGENT HUGOLINI EDWARD TILYA.....
APPLICANT VERSUS PUBLIC SERVICE PENSION FUND.....1ST RESPONDENT THE INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

27th June & 12th July 2024 CHUMA, J. The applicant herein above is seeking an extension of time within which to; (a) set aside the dismissal order dated 24/11/2023, (b) to restore Civil Case No.15/2023 dismissed on 24/11/2023, and (c) any other reliefs this court may deem fit to grant. This application is preferred under section 14(1) of the Law of Limitation Act, [Cap 89 R.E. 2019] and Order IX rule 3 of the Civil Procedure Act [Cap 33 R.E 2019]. The application was as usual made according to the practice of the High Court by chamber summons and affidavit in support of the same. Upon being served, the 1 respondents filed a joint counter-affidavit challenging the grant of the orders sought in the chambers summons. In this application, the applicant is represented by Mr. Kweka Learned counsel while the respondents are represented by Mr. Daniel Felician State and Ms Sukaina Attorneys. In his submission, Mr. Kweka Learned counsel for the applicant first abandoned the second prayer in the entire application. He went on arguing that this matter was placed before this court for hearing, on 24/11/2023 where the matter was dismissed for want of non-appearance of the applicant and his advocate. On that date, the advocates fell sick and were taken to Bugando Medical Centre for examination and treatment as per the medical sheet or appointment card annexure MS001. While at Bugando he tried to find his client to attend court session but was away for a funeral or burial ceremony of his paternal uncle hence failed also to appear in court. His effort to communicate with the Court clerk also proved a failure. Failure to appear in court was not intentional but rather ascribed to the health condition. He confidently contended that they have managed to account for each day of delay as per proof from Bugando Medical Centre via appointment card. Finally prayed this application be granted. 2 In response, Mr. Felician Daniel SA stated that in the third paragraph of the applicants' affidavit, the matter in issue was dismissed on 24/11/2023 for non-appearance. Under part three Item 4 of the Law of Limitation Act Cap 89 RE.2019. This application ought to be filed within 30 days. And 30 days expired on 23/12/2023. The instant application was filed on 29/4/2024. In the

case of Usangu Logistics(T) Limited V. Sodekra SPR Limited Civil Application No 47/01 of 2021.on page 6 the court held that for an application of this nature to be granted, the applicant must account for every day of the delay. This application was delayed for 133 days from 23/12/2023 which remains unaccountable. On the second perspective, the applicant's advocate submitted that he was attending treatment and that on 24/11/2023 when the matter was dismissed he was at Bugando for treatment. Be that as it may, still, he has still failed to account for the days of delay from 15/4/2024 to 29/4/2024 as per the medical sheet. In paragraph 4 of the applicant's affidavit, the advocate reported sick. In the case of Cats Net Limited v Tanzania Communication Regulatory Authority Civil application, No 526/01 of 2020 on page 11. 3 The court emphasized the duty of informing the court of the applicant's failure to attend court sessions. Paragraphs 5and 6 of the applicants' affidavit, Mr. Kweka seems to shift the burden to other people including the applicant and the court clerk without a supportive affidavit to substantiate the allegation as it was held in the case of Cats Net (supra). Hence the submission by Mr. Kweka on this point goes without tangible proof. Finally, it was his submission that the application lacks merit for want of the failure of the advocate and his client to advance good cause to warrant this court grant the sought order. The applicant and his advocate entered no appearance in court on 24/11/2023 as required under Order 9 Rule 1 of CPC. Mr. Felician State Attorney prayed this application be dismissed with cost. In his brief rejoinder, Mr. Kweka's advocate contended that Mr. Felician seems to have mixed up two prayers extension of time and restoration of the matter. And that his prayer is for an extension of time to apply for restoration of the dismissed matter. Accounting for each day of delay will be advanced on the application or restoration upon the grant of an extension of time to apply for a restoration order. Having heard the party's submissions, and scrutinized the record of the application the issue for determination by this court is whether the 4 applicant has established good cause to warrant the grant of the sought order. It is a settled position of law that in the application of this kind extension of the applicant must establish sufficient cause as held in the case of Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (unreported). The conditions were set out in the case of Lyamuya Construction Company Ltd V Board of Registered Trustee of Young Women's Christian Association of Tanzania Civil appeal No. 2/2010. What amounts to sufficient or good cause has been discussed in a range of cases including the Court of Appeal case of John Mosses and Three Others v. The Republic, Criminal Appeal No. 145 of 2006 where the position of the law stated in the case of Elias Msonde v. The Republic, Criminal Appeal No. 93 of 2005 was quoted. The Court of Appeal stated "We need not belabor the fact that it is now settled law that in an application for extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not 5 caused or contributed by dilatory conduct or lack of diligence on his part". It was also stated by the Court of Appeal in the case of Blue Line Enterprises Ltd. V. East African Development Bank, Misc. Application No. 135 of 1995 (unreported that:- "It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, 'upon sufficient cause being shown which has to be objectively assessed by Court.'" Again in the case of Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda - Civil Application No.6 of 2001

(unreported), it was well elaborated that: "What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant." Now back to the instant application, and guided by the above position, the reason advanced by the applicant in his application is the illness of the applicant's counsel. And that he did undergo medical treatment at Bugando Medical Centre as per the medical sheet a fact contested by the respondent. Mr Kweka further argued that while at Bugando he tried to find his client to attend a court session but was away for a funeral or burial ceremony of his paternal uncle hence failed also to appear in court. His effort to communicate with the Court clerk also proved a failure. As said earlier this fact was contested by Mr. Felician Daniel State Attorney by stating that in Paragraphs 5 and 6 of the applicants' affidavit, Mr. Kweka seems to shift the burden to other people including the applicant and the court clerk without supportive affidavit to substantiate the allegation. And that even if we are to believe his story of illness as alleged he has failed to account for his delay from 15/4/2024 to 29/4/2024. He referred this court to a case of Usangu Logistics(supra) emphasizing his point on the role of the applicant to account for each day of delay. The record of his medical sheet, in particular, indicates that he attended medical treatment until 15/4/2024. In his submission Mr. Kweka recorded at first in his submission in chief that he had managed to account for each day of delay but in his rejoinder submission changed his stance by arguing that accounting for each day of delay will be advanced on the 7 application or restoration upon grant of extension of time to apply for restoration order. This submission by Mr.Kweka is out of context so to say as this goes contrary to a number of authorities which require the applicant to advance sufficient cause to warrant the court grant the sought extension and the need of the applicant to account for each day of delay. This position is found in the case of Hamis Babu Bally the Judicial Officers Ethics Committee and three others Civil Application No.130/01 of 2020, Tanzania Coffee Board V Rombo Millers LTd, Civil Application No 13 of 2015, Bushiri Hassan V.Latifa Lukio Mashayo, Civil Application No.3 of 2007 where the court held that; "Delay, of even a single day, has to be accounted for otherwise there would be no point in having rules prescribing periods within which certain steps have to be taken". From the foregoing observation, reasons for ill health being among the supervening event may amount to or fall within the realm of good cause. The applicant however did not strictly account for each day of delay as rightly alleged by Mr. Felician State Attorney for the respondent. More so in his submission, Mr.Kweka failed to establish good cause for instance by filling the application promptly after his discharge from the hospital say on 15/4/2024 as per his medical sheet in order to meet what was 8 discussed in the case of Tanga Cement(supra). Given the above, it is my settled position that, the delay, in the circumstances of this application is with no good cause. In the event then I find this application devoid of any useful cause to grant the sought order. I proceed to dismiss this application without cost. DATED at MWANZA this 12th day of July 2024. W.M. CHUMA JUDGE The ruling delivered in court before Mr. Kweka Learned counsel for the applicant and Felician Daniel State Attorney for the respondent this 12th day of June 2024. C.KISONGO DEPUTY REGISTRAR 9

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Prepared on 14 October 2026 · Esheria