

**IN THE HIGH COURT OF ZANZIBAR**

**AT TUNGUU**

**CIVIL APPLICATION No. 88 OF 2021**

(Application for extension of time to file an application to set aside the Dismissal Order given on 12/04/2021)

**WELLWORTH HOTELS AND LODGES LIMITED.....APPLICANT**

**VERSUS**

1. **THE PEOPLE'S BANK OF ZANZIBAR LIMITED**

2. **MAJEMBE AUCTION LIMITED**

**RESPONDENTS**

**RULING**

30<sup>th</sup> November, 2023 & 12<sup>th</sup> March, 2024

**A. I. S. Suwedi, J**

**Wellworth Hotels and Lodges Limited**, the applicant prior this application filed a suit, Civil Case No. 45 of 2017 against the respondents, above named for specific performance and completion of an auction purchase process to handing over of property known as Paje Beach Resort on plot DP 852/2008 situated at Paje and he claimed for specific and/or general damages resulted from non-performance by the respondent (defendant) of the auction process conducted on 21/09/2016. The applicant attended the

auction and he came to be a highest bidder with TZS 2,500,000,000/-. He was accepted and directed to go to the 1<sup>st</sup> respondent to comply with subsequent procedures. The applicant was committed with the payment and he wrote a payment check of TZS 625,000,000/- in favour of the 1<sup>st</sup> respondent which she accepted and stayed with it until the date the suit filed. The 1<sup>st</sup> respondent was avoiding the applicant and despite repeated demands by the applicant for the completion of the auction process, the 1<sup>st</sup> respondent refused and hence the suit was filed, the suit which was dismissed for non appearance under Order XI, Rule 9 (1) of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar on 12/04/2021.

The applicant is now intending to restore the suit as he is precluded to bring a fresh suit under Rule 10 of Order XI (supra), however, the same has to be done in 30 days from the date of dismissal and the applicant is out of that required time. Hence, this application is made for extension of time to file an application to set aside a dismissal order under section 70 (1) (e), section 92, section 95 (1) and section 129 of the Civil Procedure (supra).

The application heard by way of written submission and so the applicant's submission and the rejoinder were presented for filing by the learned counsel Shehzada Walli and the 1<sup>st</sup> respondent's reply to the applicant's submission was drawn by the Head of Legal and Company Secretary. The 2<sup>nd</sup> respondent did not present the submission since he was

absent and he was excluded from the appearance by the order issued on 12/04/2021 since the order intended to be set aside was given in the absence of the 2<sup>nd</sup> respondent.

Counsel Walli foremost showed this Court that he is aware that the extension of time is a matter of discretion and he cited a case of **Benedict Mumelo v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) and then advanced reason for the delay. The reason for the delay given by the applicant as provided in the affidavit in support of the application and the submission filed is that the date the suit dismissed **advocate Ali Omar Juma** was out of Zanzibar and the matter was left in the hands of counsel **Petlord Maya** who did not appear without notice and after the dismissal order he disappeared with file of the case. Counsel Ali reported the missing of advocate Maya at Mwanakwerekwe Police Station on 27/06/2021. Following the Police process, the file of the case received on 26/08/2021 and so the process of filing this application follows. Hence, the main reason stated is the missing of counsel Maya and for that the applicant termed at as negligence of the previous advocate and he cited a High Court case of **Christian Kalinga v. Paul Ngwembe**, Misc. Land Application No. 26 of 2020 (unreported) which cited an unreported case of **William Getari Kagege v. Equity Bank and Another**, Civil Application No. 24/08 of 2018.

Besides, counsel Walli submitted on the 4 conditions provided in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 that *the applicant must account for all the period of delay, the delay shouldn't be inordinate, the applicant must show diligence and not apathy, negligence, or sloppiness in the presence of the action that he intends to take, and if the Court feels that there are other sufficient reasons such as the existence of a point of law sufficient importance such as the illegality of the decision sought to be challenged*. The applicant then assured this Court that the applicant counted all days from 12/04/2021 to 27/08/2021 the days that applicant got the lost file and from 27/08/2021 to 15/09/2021 the days used to prepare the application.

Counsel Walli also was of the view that the applicant delay is not inordinate as the suit was dismissed and the applicant had no notification and so the applicant was unaware of what happened. Further, he submitted that the applicant acted promptly to report to Police and once the file was within the applicant's possession this application was filed and he cited a case of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008 cited in the case of the High Court of the **Regional Manager (TRA) v. Atia Nassoro**, Misc Civil Application

No. 22 of 2018 (unreported) and he finally prayed for the application to be accepted.

The 1<sup>st</sup> respondent on her side has no problem as the extension of time is within the discretion of the Court upon showing good cause for the delay as shown in **Jubilee Insurance Company (T) Limited v. Mohamed Sameer Khan**, Civil Application No. 439/01 of 2020 (unreported). Respondent then was of the opinion that the applicant did not supply good cause and she prayed to the Court to dismiss this application. He strengthened her argument by the High Court case of **Ramadhan Rashid Kitime v. Anna Ally Senyangwa**, Misc. Land Application No. 3 of 2023.

She further insisted that the act of reporting to Police station has no merit while the applicant is aware of the existence of the matter before the Court. She also said that the negligence of lawyers does not constitute a good cause for the extension of time and she cited a case of **Exim Bank (T) LTD v. Jacquilene A. Kweka**, Civil Application No. 348 of 2020 (unreported) and a case of **Jubilee Insurance Company** (supra). Also the case of **William Getari Kagege** cited in the case of **Christian Kalinga** talk about mistake done by an officer of the Court and does not concern the negligence of the advocate.

1<sup>st</sup> respondent asserted further that the applicant failed to make close follow up of her case before the Court in order to get the records which is

contrary to the principle of extension of time stated in **Lyamuya Construction** (supra). Finally, she prayed for the application to be dismissed.

In his rejoinder, Counsel Walli stated that the good cause should not be given a narrow interpretation but a wide interpretation. Besides, applicant did not take advantage but the matter promptly reported to the police and he cited a case of Michael **Lessani Kweka v. John Eliafye** (1997) T.L.R 152.

I have thoroughly considered the application, affidavit in support of the application and the submission made by the parties, I have noted that parties are aware that the applicant is obliged to advance good cause for the delay in order for the Court to exercise the discretion to extend time. Applicant is bound to count each single day of the delay. Please see **Zuberi Nassor Moh'd v Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2018 and **Bariki Israel v. Republic**, Criminal Application No. 4 of 2011.

Applicant forwarded one main reason that the delay was caused by the **counsel Petlord Maya** who did not appear on the day the suit dismissed and he disappeared with the file. Counsel Walli strongly defended this point and he considered it to be a good cause just because the partner advocate reported to Police on the missing of **Counsel Maya**. Without much ado, I respectfully beg to differ with his argument and I concurred with the 1<sup>st</sup>

respondent that the point does not constitute a good cause and with this I don't take my time to read so many cases cited and attached to this application as the issue is very clear, it do not need a touch to shine more.

My stance send me to see that once after knowing the dismissal order, the applicant instead of going to Police, he would come to Court to request for records which under my considered view records of the Court are the ones that the applicant can use to apply for a restoration order just in case the time was in her favour or to apply for the extension of time. The applicant unfortunately wasted more of his time. What the original records received via Police on 26/08/2021 has to do with the application? That the question I asked myself and of course it play no role before this Court. The thing was just for their office record of which the applicant's advocate could do both simultaneously, follow up of the file via Police as he did for their office records as well as could act promptly to Court process. Hence, I see the reason not good to warrant the exercise of the discretion so vested.

Besides, after getting the file which he termed as original file from Police on 26/08/2021, the applicant stayed for 19 more days and on 20<sup>th</sup> day (15/09/2021) this application filed. I failed to understand counsel for the applicant to say that those days applicants used to prepare the application. A simple application for 19 days is ridiculous. Hence, shortly I am agreeing with the 1<sup>st</sup> respondent that the applicant failed to supply good cause to count 5

months and few days delay for this Court to grant extension of time to file the application to restore the Civil Case No. 45 of 2017.

In the upshot and for the foregoing reasons, the application is dismissed with costs.

**DATED at TUNGUU ZANZIBAR this 12<sup>th</sup> day of March, 2024**

A handwritten signature in blue ink, appearing to read 'A. I. S. Suwedi', is positioned above the printed name.

**A. I. S. Suwedi**

**JUDGE**