

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 50 OF 2016

LAURENT SIMON ASSENGA APPLICANT

VERSUS

**1. JOSEPH MAGOSO
2. SELEMAN MOHAMED NAMBOTO
3. MSOLOPA INVESTMENT COMPANY LTD. RESPONDENTS**

(Application for extension of time to file revision from the decision of the
High Court of Tanzania, at Dar es Salaam)

(Mziray, J.)

dated the 12th day of February, 2014

in

Misc. Land Appeal No. 81 of 2012

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RULING

27th May & 1st June, 2016

MASSATI, J.A.:

By a notice of motion taken out under Rules 10, 4 (2) (b) and 48 (1) of the Court of Appeal Rules, 2009 (the Rules) the applicant is seeking to move this Court to extend time for him to file an application for revision of the judgment and decree of the High Court dated 12th February, 2014 in Misc. Land Appeal No. 81 of 2012.

The notice of motion lists down five grounds upon which the application is brought. Among others grounds, the major grounds are that

as a *bona fide* purchaser of the dispute properly, he was not heard before the determination of the case right from the Ward Tribunal, up to the High Court.

The application is also supported by the applicant's affidavit in which he alleges in paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10, that, before purchasing the piece of land in question, he made a diligent search and was satisfied that the first respondent had a good title to it. Therefore, he purchased it, erected a house and moved in. Then he received a notice to vacate on 2/2/2016 but before that he was not aware of any disputes over the ownership of the suit land. It was this ignorance which contributed to his delay in filing the present application.

The first and third respondents did not file any affidavits in reply, but the second respondent did. Essentially, in the affidavit in reply, the second respondent alleges that the Applicant forged the sale agreement and that he knew of the dispute when it reached the High Court. So, he opposed the application.

At the hearing of this application, the Applicant, and the first and second respondents entered appearance, but, although duly served on

9/5/2016, the third respondent did not. So, the hearing proceeded in his absence in terms of Rule 63 (2) of the Rules.

The applicant adopted his notice of motion and affidavit and prayed that his application be allowed. He did not file any written submission. The first respondent did not object to the application, so he had little to say. The third respondent also adopted his affidavit in reply and strongly opposed the application. He argued that all along the applicant was aware of what was going on, and decided to ignore the warnings that were issued to stop him from building on the plot in dispute. So, he prayed that the application be dismissed.

In determining an application under Rule 10, the issue that has to be resolved is always, whether, the applicant has shown good cause for extension of time. What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case.

I am certain however that, a claim of illegality or otherwise of an impugned decision has, all along, constituted a good cause for extension of time under Rule 10 of the Rules (See **PRINCIPAL SECRETARY, MINISTRY OF DEFENCE AND NATIONAL SERVICE vs DEVRAM**

VALAMBHIA (1992) TLR. 185; **VIP ENGINEERING AND MARKETING
LTS AND TWO OTHERS vs CITIBANK TANZANIA LTD** – Consolidated
Civil Reference No. 6, 7 and 8 of 2006 (unreported).

In the present case, the Applicant has averred that, a decision has been passed by the lower courts against his interests without him being heard. This is a serious allegation of illegality in the impugned decision. It needs to be investigated by this Court. Since, the applicant was not a party in the lower courts' proceedings, he could only approach this Court by way of revision.

For that reason, I am satisfied that the applicant has demonstrated a good cause for extension of time. The application is accordingly granted. The application for revision has to be lodged within 60 days from the date of this ruling. Costs shall be in the cause.

DATED at **DAR ES SALAAM** this 30th day of May, 2016.

S. A. MASSATI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL