

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

CIVIL APPLICATION NO. 87 OF 2016

THE ATTORNEY GENERAL APPLICANT

VERSUS

1. TANZANIA PORTS AUTHORITY 1ST RESPONDENT
2. MR. ALEX MSAMA MWITA..... 2ND RESPONDENT

**(Application for Extension of time from the decision of the High Court of
Tanzania (Land Division), at Dar es Salaam.)**

(Mgetta, J.)

**dated the 15th of September, 2014
in
Land Appeal No. 55 of 2012**

RULING

14th September & 12th October, 2016

MUGASHA, J.A.:

The applicant brought the present motion seeking extension of time to file revision out of time against the decision of the High Court in Land Appeal No. 55 of 2012 on among others, grounds that:

1. The applicant is the Chief legal/guardian of the public property has interest in the landed property and a subject of land appeal No. 55 of 2012 which was between the 1st respondent (**Tanzania Ports Authority**) as the appellant and the 2ND respondent (**Mr. Alex Msama Mwita**) as the respondent.

2. The decision of the District Land and Housing Tribunal of Temeke (**DLHT**) which was upheld by the High Court (Land Division) was illegally procured because the **DLHT** did not have jurisdiction to determine the dispute of the landed property whose value was over and above the pecuniary jurisdiction of the **DLHT**.
3. That the applicant became aware of the existence of the land Appeal No. 55 of 2012 in February, 2016 on 02/02/2016 after being notified by the Permanent Secretary of the parent Ministry of the 1st respondent vide a letter Ref. No. FA87/257/01 dated 01/02/2016.

The application is supported by the affidavit of one **Mr. Killey Ebrania Mwitasi**, a Senior State Attorney employed in the office of the applicant. The applicant filed written submissions to buttress the motion.

The applicant was represented by Mr. Vicent Tango learned Principal State Attorney whereas Mr. Daudence Mwano learned counsel, represented the 1st respondent. The 2nd respondent was absent on account of the following state of affairs: when the application was

initially called for hearing on 29/08/2014, the 2nd respondent did not enter appearance and the hearing was adjourned to 02/09/2016 with an order that the 2nd respondent be personally served with notice of hearing.

The 2nd respondent appeared on 02/09/2016 and prayed for adjournment of the hearing to 14/09/2016. Notably, on that day, the respondents entered appearance. The 2nd respondent requested and the Court accepted that the hearing of the application be adjourned to 14/09/2016 and he was served with the application and written submissions of the applicant. However, on 14/09/2016 the 2nd respondent neither entered appearance nor availed reasons of absence. Hence, the applicant was allowed to proceed in absence of the 2nd respondent.

As gathered from the applicant's affidavit, the background to this application is as follows: Sometimes in 2006, the Government of Tanzania decided to sell residential houses owned by the 1st respondent to its employees. On 15th December, 2009, the 2nd respondent instituted a suit against the 1st respondent Land Application No. 219 of 2009 in the **DLHT** claiming to be the owner of Plot No. 41 (the suit premises) situated at Kurasini area within the municipality of Temeke in Dar es

Salaam region. The **DLHT** concluded the matter in favour of the 2nd respondent. Aggrieved, the 1st respondent unsuccessfully appealed to the High Court Land Division whereas on 15/09/2014, the High Court upheld the decision of **DLHT** and confirmed that, the 2nd respondent is a *bonafide* purchaser whose right and interest over the suit premises should not be disturbed.

Still aggrieved, the 1st respondent filed a notice of appeal to this Court. Notably as stated in the affidavit, the applicant lodged the present application after she became aware of the existence of the Land Appeal No. 55 of 2012 on 02/02/2016 vide a letter Ref. No. FA87/257/01 dated 01/02/2016 by the Permanent Secretary of Ministry of Works, Transport and Communication (parent Ministry of the 1st respondent).

Mr. Vicent Tango learned Principal State Attorney, adopted the applicant's affidavit together with the written submissions earlier on filed. In his oral submission, he added; despite the 1st respondent being a body corporate, the same is solely owned by the Government which extends to properties including the suit premises which is a subject of the impugned decision. He cited the decision of the Supreme Court of India in **Som Prakash Rekhi vs. Union of India [1981] AIR 212 SCR (2) 111** where it was held:

"It is settled position in law that any authority under the control of Government of India comes within the definition of State. On the appointed day the right title and interest in Burmah Shell did vest in the Central Government and by virtue of section 3 the Central Government was transferee of the undertaking while formal ownership was cast in the corporate mould, the reality reaches down to State control. The core fact is that the Central Government, through section 7 chose to make its own property to its own off spring. Therefore, the Burmah Shell though a government is but alter ego of Central Government and must be treated as definitionally caught in the net of the State since a juristic veil worn for certain legal purposes cannot obliterate the true character of the entity for the purposes of constitutional law".

Mr. Daudence Mwano for the 1st respondent had nothing to submit apart from adopting the entire submission of the applicant.

In paragraphs 15 and 16 of the applicant's affidavit, the applicant contends to have brought this application as an interested party being the chief legal custodian of the suit premises after the applicant became aware of existence of the impugned decision pursuant to a letter authored by the Permanent Secretary of the parent Ministry of the 1st

respondent. Besides, it is the contention of the applicant that she was not a party in the impugned proceedings before the courts below.

In that regard, it is imperative to address such interest, if any, before resolving the issue as to whether there is sufficient ground for extending time to apply for revision against the impugned proceedings and decision of the High Court Land Division.

In compliment to the Indian position, what guarantees an intervention of the present nature in our local jurisdiction? At the outset, applications for extension of time also covers intended interveners even at appellate stage as observed by this Court in the case of **Tanga Gas Distributors Limited vs. Mohamed Salim Said & 2 others (supra)** **Tanga Gas Distributors Limited vs. Mohamed Salim Said & 2 Others**, Civil Application for Revision No. 68/2011, (Unreported) that:

*"Although it is not specifically necessary in the determination of this application, we would like to observe in passing, that this power can be exercised by the court **"at any stage** of the proceedings" even without any party so applying. This may be done either before, or during the trial or even if after judgment if damages are yet to be assessed, etc: see **THE DUKE OF BUCCLEUCH** [1892] P 201, C.A., **HALSBURY'S LAWS OF ENGLAND** (supra) para 225, **MULLA***

(supra) at p. 1012 item (3), and **PARUKUTTY AMMA v. RAMANUNNI**, AIR 1966 Ker 150. As was stressed in the case of **PUJYA SINDH PANCHAYA v. C.L. MISHRA**, AIR 2002 Raj 274, it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that this rule becomes inapplicable. **As such, a party can be added even at the appellate stage:** **IRAMMA v. CHAUDAMANA** AIR 1976 Kant 62”.

Accounting for a situation where one can be joined as an intervener, a person who was not a party to the proceedings below, can challenge the impugned decision by way of revision. **(See Halais Pro-Chemie A.G.Wella 1996 TLR 269 and Mgeni Seif vs Mohamed Yahaya Khalfani**, Civil Application No. 104 of 2008 (Unreported).

Notably, Tanzania Ports Authority is a body corporate by virtue of section 4(1) (a) of the Ports Authority Act, 2004 capable of suing and be sued. However, section 3 of the Public Corporations Act **[CAP 257 RE.2002]** defines a public corporation as follows:

"Public corporation" means any corporation established under this Act or any other law and in which the Government or its agent owns a majority of the shares or is the sole shareholder."

Moreover, a public corporation in which the Government is a majority shareholder is under the control of the Government as evidenced by the following: according to section 9(1) & (2) **One;** it is the President who appoints the Chairman of the Board of Directors and the Board members are the appointees of the Minister responsible with the public corporation, **two;** the Chief Executive Officer of the said public corporation is the appointee of the Minister in terms of section 13(1) of the Ports Authority Act (supra).

Besides, under section 6 of the Public Corporations Act (supra), the Minister is mandated to give the Board of Directors of the public corporation general or specific directions as to the performance of its functions. Moreover, the accountability of a public corporation to the Minister responsible is spelt out under Part IV of the Public Corporation Act.

The Ports Authority Act of 2004, has corresponding provisions whereby, **one,** under section 6(1) the Chairman of the Board of Directors is appointed by the President whereas the Board members are appointees of the Minister. **Two,** it is the Minister who appoints the Director General and Chief Executive Officer of the Ports Authority under section 34(2). **Three,** under section 20(1) the Minister may give

directions to the Ports Authority which is required to give effect to such directions in terms of section 20(3). Similarly, the Ports Authority as a public corporation is accountable to the Minister responsible as spelt out under Part IV of the Public Corporation Act (supra).

In view of the stated position of the law, the Tanzania Ports Authority as public corporation is under the control of the Government, notwithstanding its corporate status; capable of suing and be sued under section 4(1) of the Ports Authority Act of 2004. However, subsection (2) gives following directions:

"Notwithstanding the preceding provisions of this section and Authority having status of a body corporate, the Attorney General shall have the right to intervene in any suit or matter instituted by or against the Authority."

In the premises, the Government through the Attorney General has interest in the present application and the impugned proceedings and that is what prompted the applicant as Chief legal custodian of public property to institute this application having invoked section 6(a) of the Office of Attorney General (Discharge of Duties) Act which categorically gives following directions:

"In the discharge of the functions under sub article (3) of the Article 59 of the Constitution, the Attorney General shall have the exercise of the following powers:

To appear at any stage of any proceedings, appeal, execution or any incidental proceedings before any court or tribunal in which by law the Attorney General's right of audience is excluded."

In view of what is stated above, I am satisfied that the applicant has established an interest worth consideration to have to this application by a person who was initially not a party, to intervene at this stage.

On the basis of the stated position of the law, this application for extension of time to lodge an application for revision hinges on two limbs, **one;** the complaint of illegality and **two;** an account of the delay. Starting with the first limb, the immediate issue is whether or not the applicant has demonstrated sufficient cause to warrant grant of extension of time to apply for revision. In this regard the guiding factor is Rule 10 of the Court of Appeal Rules, 2009 (the Rules) which states:-

"The court may, upon good cause shown, extend time limited by these rules or by any decision of the High Court or tribunal,

for the doing of any act authorized or required by these Rules, whether before or after expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time so extended.”

What amounts to good cause includes whether the application has been brought promptly, absence of any invalid explanation for delay and diligence on the part of the applicant. (See: **Tanga Cement Company Limited vs. Jumanne D. Massanga and Amos A. Mwalwanda**, Civil Application No. 6 of 2001).

Moreover, it is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay. (**See VIP Engineering & Marketing Ltd & 2 Others vs. Citibank Tanzania Ltd**, Consolidated Civil Reference No. 6, 7 & 8 of 2006 (Unreported))

Considerably; the applicant argued that, there are issues on illegality including the DLHT entertaining and determining the land dispute whose value was over and above the statutory pecuniary

jurisdiction of the Tribunal. The other issue on illegality is the disregard by the courts below of the legal requirements in the transfer of registered land before its revocation.

In my considered view, the applicant's claim on illegality of the challenged decision is one of the special circumstances constituting sufficient causes for extension of time under Rule 10 of the Rules, regardless of whether or not a reasonable ground has been given to account for the delay. (See: **VIP Engineering & Marketing and 2 Others vs. Citibank Tanzania Limited (supra)** and the case of **Ministry of Defence, National Service vs. Devram (1992) TLR 185**)

As to the second limb regarding an account for the delay, the applicant's counsel argued that the applicant has demonstrated good cause to be granted extension of time.

As earlier reiterated, the applicant who was not a party to the proceedings below, lodged the present application after she became aware of existence of the impugned proceedings pursuant to the letter by the Permanent Secretary of the parent Ministry of the 1st respondent received by the applicant on 2nd February, 2016. Subsequently, on 30/3/2016 which was not beyond sixty days, the applicant lodged the

present application. In the light of what was decided in **Tanga Cement Company Limited vs. Jumanne D. Massanga and Amos A. Mwalwanda (supra)**, the applicant apart from having a valid explanation of not being aware of the impugned proceedings, in my firm considered view, the applicant acted promptly demonstrating vigilance in pursuit of the matter.

In view of the aforesaid, I am satisfied that, the applicant has demonstrated good cause warranting grant of the application. I hereby grant extension of time to file revision out of time against the decision of the High Court in Land Appeal No. 55 of 2012 not later than thirty (30) days from the date of this Order. Consequently; costs of this application should follow the event.

DATED at DAR ES SALAAM this 29th day of September, 2016.



S.E.A. MUGASHA
JUSTICE OF APPEAL

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


E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL