

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

CIVIL APPLICATION NO. 215 OF 2016

**ALLY AHMAD BAUDA APPLICANT
(Administrator of deceased Amina Hussein Senyange)**

VERSUS

**1. RAZA HUSSEIN LADHA DAMJI
2. SAID OMARY SAID
3. TAMBAZA AUCTION MART &
GENERAL BROKERS** } **RESPONDENTS**

**(Application for extension of time to lodge application for revision from the
decision of the High Court of Tanzania, Land Division, at Dar es Salaam)**

(Kalombola, J.)

**Dated the 5th day of August, 2013
in
Land Case No. 163 of 2013**

RULING

25th & 28th October, 2016

LILA, J.A.:

This is an application for extension of time to lodge an application for revision of the whole proceedings of the High Court of Tanzania Land Division (Hon. Kalombola, J.) in Land Case No. 163 of 2013. The application is brought by way of a Notice of Motion supported by an affidavit affirmed by Ally Ahmad Bauda, the applicant, and is brought under Rule 10 of the Court of Appeal Rules, 2009.

The application is based on two grounds. These are:-

1. That, the applicant was not aware of the existence of the proceedings of the High Court in Land Case No. 163 of 2013 and was not part to the said suit.
2. There are illegalities and irregularities in the proceedings of the Land Case No. 163 of 2013.

The background of the matter as can be gathered from the facts contained in the applicant's affidavit in support of the application is that the applicant is the administrator of the estate of late Amina Hussein Senyange who was also known as Amina Senyange Bauda and Amina Senyange. It is said that among the properties of the late Amina Hussein Senyange are property located at Plot No. 8 Block 67 Kipanda Street Kariakoo and apartments No. 5A on 5th floor, 7B on 7th floor and 2B on 2nd floor in Commercial and Residential Building located on land known as Plot No. 84 Block "M" Kariakoo Area in Dar es Salaam with Title No. 52109 allegedly in possession of Mr. Imran of Al-Rais Development Company. It appears in the due course of administering the estate, the applicant went to Mr. Imran to claim for the certificates of Titles only to find being given those for Apartments No. 5A and 7B only. As for apartment No. 2B he was told that the same was sold in satisfaction of a decree issued in respect of Land

Case No. 163 of 2013 in which the late Amina Hussein Senyange was a defendant. The applicant avers that he was not aware of the existence of such proceedings in the High Court which he now wish to challenge by way of a revision but he is late in initiating revisional proceedings. Hence this application for extension of time.

The present application was filed on 20/7/2016 and as mandatorily required under Rule 106 (1) of the Rules, the applicant filed written submissions in support of the Notice of Motion on 19/9/2016, well within the prescribed period of sixty days from the date of lodging the Notice of Motion. The applicant also filed a list of authorities under Rule 34 of the Rules also within time that is more than forty eight hours before the application was due to be heard (see Rule 34 (2) (c) of the Rules).

When the application was called on for hearing Mr. Halfani Daimu, learned advocate, appeared for the applicant and Mr. Cornelius Kariwa, learned advocate, appeared for the 2nd respondent. The hearing proceeded ex parte against the 1st and 3rd respondents because they were duly notified to appear for hearing but did not enter appearance for unknown reasons. I consequently ordered the hearing to proceed in their absence.

At the very outset, Mr. Kariwa under Rule 106 (1) of the Rules, urged the Court to waive the requirements under Rules 56 (1) and 106 (8) of the Rules to file a reply affidavit and reply written submissions respectively on the reason that he was just engaged to represent the 2nd respondent hence he had no enough time to thoroughly go through the various documents, prepare and file such documents. He further said he had no objection to the application being granted. Mr. Daimu had no objection to the prayer to waive the requirement to file affidavit in reply and reply written submissions. I found the reason that Mr. Kariwa was just engaged and does not contest the application which have the effect of accelerating trial to be exceptional circumstances under Rule 106 (19) of the Rules and I allowed the hearing of the application to proceed orally on the part of Mr. Kariwa.

During the hearing Mr. Daimu having in mind that the application is not contested urged the Court to adopt as part of his arguments and consider the grounds in the Notice of Motion, affidavit in support of the application as well as the written submissions in support of the application filed. He accordingly prayed the application be granted. He also pressed for costs except against the 2nd respondent who does not contest the application.

On his side, Mr. Kariwa, as indicated above, informed the Court that he has no objection to the application being granted.

The central issue for consideration and determination is whether the applicant has shown sufficient or good cause to warrant extension of time.

I have exhaustively read the Notice of Motion and the grounds thereof as well as the affidavit and written submissions filed by the applicant in support of the application. The applicant, it is apparent, is an administrator of the estate of the late Amina Hussein Senyange. The later owned apartment No. 5A, 7B and 2B in a Commercial and Residential Building at Kariakoo area. It is also clear, from the above documents, that the late Amina Hussein Senyange was a defendant in Land Case No. 163 of 2013 which was heard and determined without the applicant's knowledge. He came to be aware of the Court decision when he was told by one Imran that apartment 2B was sold in execution of the High Court Decree in the above named suit. As an administrator, I have no doubts that he could not be aware of the Court proceedings unless joined in the case or else informed. This constitutes good reason for delay in filing the revisional proceedings under Rule 10 of the Rules.

I am also well aware of this Court's decisions that the only way a third party, as is the case herein, can access the Court is by way of

revision. One such case is that rightly cited by Mr. Daimu of **Amani Mashaka** (applying as the Administrator of the estate of Mwamvita Ahmed, deceased) **vs Mazoea Amani Mashaka and Two Others**, Civil Application No. 124 of 2015.

Another ground raised for the delay is that there are illegalities and irregularities in the proceedings of the Land Case No. 163 of 2013. It is now settled that a claim of illegality or otherwise of an impugned decision constitute a good cause for extension of time. In support of this position the applicant have cited to me the decision in **Principal Secretary, Ministry of Defence and National Service vs Devram Valamblia** [1992] TLR 185. I will also add the case of **VIP Engineering and Marketing Ltd and Two Others vs Citibank Tanzania Ltd**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported) and even a very recent decision of this Court in **Laurent Simon Assenga vs Joseph Magoso and Two Others**, Civil Application No. 50 of 2016 where this Court reiterated its earlier stand that:-

" 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."

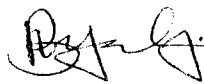
The applicant, in the present application, alleges that there was a counterclaim which was raised by the deceased defendant (Amina Hussein Senyange) in Land Case No. 163 of 2013 but was not heard and was not part of the purported compromise of suit. This, no doubt, constitute a serious omission by the trial court which need be investigated by this Court by way of a revision as the applicant was not a party in the High Court proceedings.

All said, the two reasons advanced by the applicant constitute good cause for extension of time. I hereby accordingly grant the application. The application for revision to be lodged within sixty (60) days from the date of delivery of this ruling. Costs shall be in the cause.

DATED at **DAR ES SALAAM** this 26th day of October, 2016.

S. A. LILA
JUSTICE OF APPEAL

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



B. R. NYAKI
DEPUTY REGISTRAR
COURT OF APPEAL