THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 520/17 OF 2016

1. MATHIAS SAID MFUMYA
2. TAUSI H. RAJABU
3. FRANK ONESMO NGARAMA
4. JULIUS AINAMEN MCHAU
5. ALEX KISIMA
6. GERADI BIYAKA
7. GRACE A. KISIMA
8. NASRA RAMADHANI KIPONDA ....APPLICANTS
9. DEO PHILIP TEMBA
10. PANTALEO P. MBENA
11. REUBEN JACKSON CHAULA
12. EDMUND GRATIAN
13. MWAFITINA PONZA
14. JEREMIA MREMA
15. ABELI TWAZA
16. KHALIDI MAULIDI HINTAY

VERSUS

1. CHRISTOPHER M. NYIRABU
2. FLUMENCE LEODGAR LUPINDU
3. ALEX LUPINDU ....RESPONDENTS
4. HAMIS a.k.a HAMIS BONGE

(Application for Extension of time to file revision from the ex-parte
Judgment and Decree of the High Court of Tanzania
at Dar es Salaam)

(Mwandambo, J.)

dated the 5th day of June, 2015
in
Land Case No. 56 of 2012

RULING

21st 31st August, 2018

MZIRAY, J. A.:

The applicants, through the services of Mr. Wilson Ogunde, learned advocate from Brotherhood Attorneys brought the present motion under Rule 10 of the Court of Appeal Rules,2009 seeking extension of time to file Revision out of time on the grounds that:

i. *The applicants being lawful owners and occupants of the respective pieces of land forming part and parcel of the land described in the Court's Judgment as Plot No. 244 at Kitunda Industrial Area, Ilala Municipality, Dar es Salaam City were not parties to the proceedings in Land Case No. 56 of 2012 in the High Court of Tanzania, Dar es salaam District Registry as such were not aware of the judgment and the Respondents did not make the Applicants to become aware of the proceedings of the aforesaid case although all of them had prior knowledge of the Applicants' proprietary rights in respect of the disputed property.*

ii. *The applicants were not given opportunity to be heard and as a consequence were not heard by the trial court in Land Case No. 56 of 2012 which omission has affected and is likely to deprive the Applicants of their respective properties.*

The application is supported by the affidavit of Mathias Said Mfumya, the 1st applicant. All the respondents have filed affidavits in reply to controvert the contents of the affidavit. The learned Counsel have also dutifully filed their written submissions in support of their cases.

At the hearing of the application both parties had the services of learned counsel. While Mr. Wilson Ogunde, represented the applicants, Mr. Francis Mgare, on the other side advocated the 1st respondent and the 2nd and 3rd respondents enjoyed the services of Bethuel Peter, learned Advocate. The matter however proceeded ex-parte against the 4th respondent as there was a previous order of this Court to that effect.

Mr. Ogunde adopted the affidavit in support of the application and his written submission and briefly submitted that the applicants being occupants of the land in dispute have interest in it and therefore ought to have been made parties to the proceedings in Land Case No. 56 of 2012 which determined the fate of that particular land. He further submitted that the applicants who had interest in the disputed land were not joined as parties in the proceedings before the High Court hence the matter was determined without according them a right of hearing something which prejudiced their rights and was against the principles of natural justice-commonly referred as **audi altern partem rule**. To underscore the point, the learned counsel cited the case of **Principal Secretary, Ministry of Defence and National Service V. Devram Valambhia** [1992] TLR 185, and went on to submit that whenever faced with applications for extension

based on grounds of possible illegalities or irregularities, the Court has invariably found that to constitute good cause for extension of time. On that basis he argued the Court to grant the application sought.

Mr. Bethuel Peter, on his part did not resist the application at all. He urged the Court to grant the application as prayed save for costs. Mr. Mgare on his part opposed the application. Basically he submitted that the illegalities complained of, have not been disclosed both in the applicants' affidavits and written submission. Citing the case of **Tanzania Habours Authority V. Mohamed R. Mohamed** (2003) TLR 77, he adamantly argued that the kind of illegality explained by Mr. Ogunde, must be stated in the application for extension of time something which was not done in the instant application. For these reasons and the omissions stated, Mr. Mgare prayed that the application be dismissed with costs.

Having considered the arguments both in support and against the application the only issue this Court should determine is whether there are sufficient grounds for extending the period of applying for revision against the decision in Land Case No. 56 of 2012.

I have carefully gone through the application. There is no doubt at all that the applicants who are claiming proprietary interest in the land in

dispute were not parties to the proceedings in Civil Case No. 56 of 2012 at the High Court. This was a serious legal irregularity. They ought to have been joined in the case to protect their interests.

In **Principal Secretary, Ministry of Defence and National Service V Devram Valambhia** [1992] TLR 185 this Court held *inter alia,* I quote:-

> *"We think that where, as here, the point of law at issue is illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute "sufficient reason" within the meaning of rule 8 of the Rules for extending time. To hold otherwise would amount to permitting a decision which in law might not exist to stand..."*

In view of the fact that the applicants are occupants of the land in dispute, coupled with the fact that they were not joined as parties to the proceedings in Land Case No. 56 of 2012 and not having a right of appeal, then the only avenue open for them would be revision. In those circumstances, there is justifiable cause for extending the period for applying for revision against the decision in Land Case No. 56 of 2012. In

this, I find support in the Court's decisions in **Halais Pro-Chemie versus Wella AG** [1996] TLR 269 and **M.B. Business Limited V. Amos David Kasanda and Two Others.** Civil Application No. 66 of 2014 (unreported)

That said, I accordingly grant leave and extend the period of instituting revision proceedings in this Court out of time. The intended Revision should be instituted within twenty one (21) days from the date of delivery of this Ruling. No order as to costs.

Ordered accordingly.

DATED at **DAR ES SALAAM** this 28th day of August, 2018.

R. E. S. MZIRAY
JUSTICE OF APPEAL

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

B.A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL