

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

CIVIL APPLICATION NO. 376/01 OF 2017

MUSE ZONGORI KISERE ..... APPLICANT  
VERSUS

1. RICHARD KISIKA MUGERDI  
2. SOPHIA DHOKE MARYOGO ..... RESPONDENTS  
3. SELF/ILLY MPENDWEKWE

(Application for Extension of Time to lodge an Application for Revision  
from the Judgement of the High Court of Tanzania, Dar es Salaam  
District Registry at Dar es Salaam)

(Bubeshi, J.)

dated the 20<sup>th</sup> day of December, 2002  
in  
Matrimonial Cause No. 2 of 1997

.....

**RULING**

2<sup>nd</sup> April & 3<sup>rd</sup> May, 2019

**LEVIRA, J.A.:**

The applicant, Muse Zongori Kisere by Notice of Motion made under Rules 4(1) (2)(b) and 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) is seeking for an extension of time within which to lodge an application for revision. The Notice of Motion is supported by an affidavit duly deposed by the applicant. The application is based on the following grounds:

*1. That, the delay in filing the envisaged application  
was due to the applicant's bonafide pursuit of  
objection proceedings in the High Court against*

*Matrimonial Cause No.2 of 1997; Civil Application No. 84 of 2006 before the Court; Civil Case No. 7 of 2014 at the High Court and Land Case No. 48 of 2015.*

*2. That, there has been a serious miscarriage of justice in the way Matrimonial Cause No.2 of 1997 was determined, particularly or including that:*

*a) The High Court held that there was presumption of marriage between the 1<sup>st</sup> and 2<sup>nd</sup> respondent even in the pre-existence of a subsisting valid marriage between the applicant and the 1<sup>st</sup> respondent; and*

*b) The High Court ordered 50:50 division ratio of matrimonial property between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent in total disregard of the existence and contribution of the applicant in the acquisition of the matrimonial property.*

However, the application was contested by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. At the hearing, the applicant and the 1<sup>st</sup> respondent appeared in person, unrepresented. The 2<sup>nd</sup> respondent was represented by Ms. Nakazael Tenga, learned counsel and the 3<sup>rd</sup> respondent enjoyed the services of Mr. Mpaya Kamala, learned counsel.

In her submission in support of the application, the applicant commenced by adopting the contents of her affidavit. She introduced the 1<sup>st</sup> respondent as her husband whom they contracted marriage in 1979. Regarding the reason for delay to lodge application for revision, the applicant stated that, she went to Musoma to attend her mother in law who was sick that is why she did not lodge the application in time. Unfortunately, the said mother in law passed away in 2014 and that is when she came back.

The applicant added that, in May, 2006 she was served with a notice of vacation which required her to vacate from the landed property which she jointly acquired with the 1<sup>st</sup> respondent. Having received that notice, she struggled in the court corridors to find stop order that is why she did not lodge application for revision in time. Finally, she urged me to help her to get her right.

The 1<sup>st</sup> respondent did not oppose this application. He confirmed that he is the husband of the applicant. He added that, in 2006 is when his wife (the applicant) discovered that he had a case with the 2<sup>nd</sup> respondent; she lodged an application for injunction, trying to defend their house from being sold; but, in 2008 her application was struck due to time limitation. The 1<sup>st</sup> respondent also confirmed that his wife went

to Musoma to take care of his mother who was sick. Basing on Article 107A(2) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time, he prayed that this application be granted.

In reply, Ms. Tenga commenced her submission by adopting the 2<sup>nd</sup> respondent's written submission filed on 11<sup>th</sup> of May, 2018. It was her submission that, the application before me is for extension of time within which to lodge revision application. She argued that, extension of time is under court's discretion and the said discretion need to consider among other things allegation of illegality. Ms. Tenga went further stating that, the applicant herein alleges illegality that, she contracted a legal marriage with the 1<sup>st</sup> respondent so the decision of the High Court was wrong. According to Ms. Tenga, the said illegality does not exist and this application has no base. Ms. Tenga was of the view that, the High Court did not bless the marriage between the 1<sup>st</sup> and 2<sup>nd</sup> respondents, instead, since the two were living together, the High Court under section 160(1), of the Law of Marriage Act, Cap 29 R.E 2002 distributed the property acquired during their relationship, that is, the house in question. Basing on that, Ms. Tenga prayed that this application be dismissed. She concluded by stating that, this application is time barred because the impugned decision is of 2002. The judgment had already

been executed about 12 years ago and thus, there is nothing to be revised any more. According to her, litigation has to come to an end.

On his part, Mr. Kamala commenced his submission by remarking that, the application before me does not meet the requirement of the law guiding extension of time. However, he adopted the contents of the 3<sup>rd</sup> respondent's written submission.

Regarding the first ground of delay submitted by the applicant, Mr. Kamala argued that, the said reason is not among the grounds appearing in the applicant's affidavit; so, he urged me to disregard it. In addition, he stated that, bad relationship between the applicant and the 1<sup>st</sup> respondent stated under paragraph 5 of the applicant's affidavit is what made the High Court to distribute the property which was acquired during the time of relationship between the 1<sup>st</sup> and 2<sup>nd</sup> respondents under section 160 of the Law of Marriage Act (supra). He further submitted that, after the decision of the High Court, the applicant lodged application No. 84/2006 before the Court, the said application was struck out on 5<sup>th</sup> day of February, 2009. Thereafter, sale of the property was confirmed and the certificate of sale was issued, the 3<sup>rd</sup> respondent was declared a *bonafide* purchaser.

On 10<sup>th</sup> January, 2014 the applicant instituted a suit, Civil Case No. 48 of 2015 at the High Court for declaration that she is the lawful wife of the 1<sup>st</sup> respondent with interest in the matrimonial home (subject to this application), and nullification of sale conducted on 24<sup>th</sup> June, 2006 among others; but, the said suit was dismissed on 11<sup>th</sup> August, 2017. On 23<sup>rd</sup> August, 2017, the applicant lodged the current application. According to Mr. Kamala, there is time between 6<sup>th</sup> February, 2009 when the application was struck out to 10<sup>th</sup> January, 2014; this is the period which the applicant is saying that she was taking care of her sick mother in law; but, the applicant's affidavit does not state about the said sickness. Mr. Kamala observed that, there is nothing produced by the applicant to substantiate the allegation that the said mother in law was sick and later, died.

It was his further submission that, another period which is not accounted for by the applicant is from 11<sup>th</sup> August, 2017 to 23<sup>rd</sup> August, 2017 when this application was lodged. He insisted that, the applicant is required to account for each day of the delay; he cited the case of **Bharya Engineering & Contracting Co. Ltd v. James Alan Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (Unreported).

In regard to the allegation of illegality, Mr. Kamala associated himself with what was presented by Ms. Tenga, that there is no illegality in this matter. He added that, when a man and a woman live together for two years and acquire property together, they deserve distribution of their property in case of separation. Therefore, there is nothing wrong done by the High Court (Bubeshi, J.) in the matter subject for revision. He insisted that the third respondent is a *bonafide* purchaser of the property which was sold 12 years ago. In support of his argument, he cited the case of **Peter Adam Mboweto v. Abdulla Kulala** [1981] T.L.R. 335 where it was held that, when sale is absolute, any further decision cannot affect the *bonafide* purchaser. Finally, he prayed for this application to be dismissed with costs.

In rejoinder, the applicant blamed her advocate for failure to give her proper guidance. She claimed that, the said advocate did not ask her where she was by the time he was assisting her to prepare this application. According to the applicant, she was not aware that her husband was having another wife who was staying in the house in question.

I have considered the submission by parties at length and the record of the application. I wish to state at the onset that, currently, the

application for revision is not before me. I am only dealing with an application for extension of time within which to lodge revision application. It is well and good that parties have aired out their views in regard to the alleged illegality but, as a single Justice, I will only consider illegality raised to determine as to whether the same constitutes good cause to justify extension of time sought. Having so stated, I now revert to determine as to whether the applicant has been able to advance good cause in terms of Rule 10 of the Rules to justify extension of time.

The first ground raised by the applicant as a reason for the delay to lodge application for revision in time in her oral submission is that, she was attending her sick mother in law in Musoma who passed away in 2014. It is so unfortunate that, this information is not contained in the applicant's affidavit as correctly pointed out by Mr. Kamala. Without wasting much time, I wish to state that, the applicant has only made a bare assertion that she was taking care of her sick mother in law that is why she was late in lodging application for revision. She blamed her advocate for not guiding her properly. The reason for delay put forward by the applicant in my considered opinion, does not constitute good cause as the same was not proved. In addition, the mistake of an



advocate has never been made a special circumstance in granting extension of time.

Another reason that can be gathered from the Notice of Motion is that, the applicant's delay was caused by several attempts she made in the High Court and the Court to recover the landed property in question. This ground was challenged by Mr. Kamala for failure to cover all the days of the delay as required by the established principles.

It is a well-established principle that, in case of delay to lodge an application, an applicant who seeks for extension of time must account for each day of the delay. In **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) it was held that:

*"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

Since the applicant herein has not even stated when exactly she went to Musoma and came back; and, why she did not lodge the application for revision immediately after refusal of injunction application; I find that, the applicant has not been able to account for each day of the delay. Consequently, the first ground fails.

Having determined the first ground on the reasons of delay, I now revert to consider the ground of illegality as the same may as well constitute good cause to justify extension of time. In **Republic v. Yona Kaponda and 9 Others** [1985] T.L.R 84 the Court stated at page 86 that:

*"In deciding whether or not to extend time I have to consider whether or not there are "sufficient reasons." As I understand it, "sufficient reasons" here does not refer only, and is not confined, to the delay. Rather it is "sufficient reason" for extending time, and for this I have to take into account also the decision intended to be appealed against, the surrounding circumstances, and the weight and implications of the issue or issues involved."*

In the current application, I agree with the parties' that, illegality can constitute good cause to justify extension of time as introduced above. However, it has to be noted that, it is not every alleged illegality that can do well to the application for extension of time; except, the one that is apparent on the face of record. In **Motor Vessel Sepideh and**

**Pemba Island Tours & Safaris v. Yusuf and Ahmad Abdullah**, Civil Application No.91 of 2013, (Unreported) it was held that, for the purpose of extension of time, the applicant is not required to prove that illegalities and irregularities can sustain a revision, rather it is adequate to show that there are illegalities and irregularities patent on the face of record.

In the matter at hand, it is alleged that the trial Judge was wrong when she distributed the property allegedly jointly acquired by the 1<sup>st</sup> and 2<sup>nd</sup> respondents while ignoring the fact that, the 1<sup>st</sup> respondent and the applicant are legally married. I wish to observe that, under paragraph 2 of the supporting affidavit, the applicant attached a marriage certificate as annexure MZ-1 to indicate that she contracted a monogamous marriage with the 1<sup>st</sup> respondent in November, 1979. I further take note that, under paragraph 3 of the supporting affidavit, the applicant attached annexure MZ-2, a copy of Certificate of Title No. 44763 (subject to this application) issued to Richard Mugendi, her husband. The said property is referred as matrimonial property by the applicant. The applicant also claimed that, she was not aware of the matrimonial cause (subject to this application) between her husband

(the 1<sup>st</sup> respondent) and the 2<sup>nd</sup> respondent until when she was served with a notice of vacant possession in May, 2006.

Having scanned the record in this application and after considering the submission by the parties, I observed that, the alleged illegality in the application at hand is that, the High Court wrongly distributed the proceeds of the alleged matrimonial property of the applicant and the 1<sup>st</sup> Respondent to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents despite the fact that, the issue of existence of legal marriage between the 1<sup>st</sup> respondent and the applicant was raised before the trial Judge and the marriage certificate proving their monogamous marriage was tendered as an exhibit. Yet, the decision of the High Court based on the presumption of marriage between the 1<sup>st</sup> and 2<sup>nd</sup> respondents as per the record. Under such circumstances, it is my considered opinion that, the applicant being the wife of the 1<sup>st</sup> respondent, might have an interest in the landed property in question something which cannot be determined in this application for extension of time. Therefore, I find that, the alleged illegality is apparent on the face of record and it falls squarely within the meaning of good cause in terms of Rule 10 of the Rules.

In the upshot, the application has merit and it is hereby granted. The applicant is given sixty (60) days to lodge her application for

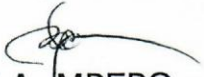
revision from the date of the Ruling. Considering circumstances of this application, each party shall bear its own costs.

**DATED** at **DAR ES SALAAM** this 25<sup>th</sup> day of April, 2019.

M.C. LEVIRA  
**JUSTICE OF APPEAL**

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



  
B.A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**