

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

CIVIL APPLICATION NO. 413/08 OF 2022

BETWEEN

TILUHUMA PIMA APPLICANT

VERSUS

MALOGOI MUHOYI..... RESPONDENT

*(Application for extension of time to file revision against the ruling of the High
Court of Tanzania)*

(Mgeyekwa, J.)

**Dated 12th day of November, 2019
in
Misc. Land Appeal No. 47 of 2019**

.....

RULING

1st & 8th December, 2022.

RUMANYIKA, J.A.:

In this application, Tilihumula Pima, the applicant is seeking an order of the Court to extend time within which he may file an application for revision against the Ruling of the High Court in Misc. Land Appeal No. 47 of 2019.

Initially, there was a decision on appeal dated 14/12/2018 of the Ukerewe District Land and Housing Tribunal (the DLHT) which was later

quashed by the High Court (Longway, J.) vide Land Revision No. 1 of 2007 and ordered a fresh appeal to be filed within 30 days from the date of that decision, 06/11/2006. In compliance of the said order of the court, Land Appeal No. 70 of 2006 was refiled in the DLHT and the respondent won the battle on 14/12/2018, as he was declared the lawful owner of the disputed property. Aggrieved by that decision, the applicant filed revision proceedings before the High Court to challenge the same. Unfortunately, that application for revision was dismissed for being time barred. However, as that decision still aggrieved him, as indicated before, the applicant is before the Court seeking extension of time to file an application for Revision to fault the court.

The application is premised on three grounds; **one**, that the DLHT ousted jurisdiction **two**, that the appeal before the DLHT was time barred as it was refiled out of thirty days which was previously ordered by the court, which is illegality. **Three**, that the applicant fell sick as he had to attend at Ukerewe District Hospital for the period between June 2020 to July 2021 inclusive of the dates as an outpatient.

At the hearing of the application on 02/12/2022, the parties appeared in person without legal representation.

The applicant adopted his written submissions, pursuant to rule 106 (1) of the Rules filed on 17/06/2022 and contended that, considering an order of the High Court dated 06/11/2007, an appeal refiled in the DLHT was time barred because, the respondent refiled it about ten years which is far beyond thirty days as counted from 06/11/2007 and that, that illegality constituted good cause for extension of time. To support his point, he cited **The PS Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR 182. Stressing on the requirement of the parties' strict adherence to the court orders, the omission of which renders the resultant decision ineffectual, he cited an unreported decision of the Court in **Karoli Chogoro v. Waitihache Marengo**, Civil Appeal No. 164 of 2018. Now that, he added, the issue is one of jurisdiction, like here, that point could be raised at any time even at appeal stage. To bolster her argument, the applicant referred me to **Mandavia v. Singh** (1965) EA 118.

To wind up, as regards the legal effects of the immediate impugned decision and proceedings of the DLHT in the said Land Appeal No. 70 of 2006, the applicant stressed that, it was fundamental and incumbent upon the DLHT and later the High Court, at the earliest opportune, before

proceeding to the hearing of those matters to satisfy themselves if were clothed with jurisdiction but they did not, and for that reason, he added, the impugned decision had no legal effects. On that one, he cited our decision in **Richard Julius Rukambura v. Isaack Ntwa Mwakajila and Another**, Civil Appeal No. 2 of 1998 (unreported).

As regards the 3rd ground, on the illness which he also cited to be good cause for extension of time, the applicant averred that had the court considered his evidence that he fell sick, and for that reason, for quite sometimes admitted at Ukerewe District Hospital, and continued to attend there as an outpatient for the period of June, 2020 and July, 2021, it would not have, as it happened, dismissed the applicant's appeal for being time barred.

Winding up, the applicant faulted the Judge for dismissing the purported time-barred appeal instead of sticking it out, which order, he further contended, by its nature could not give him a room to appeal, nor allow him to go back applying for extension of time.

Replying, the respondent submitted that, the application was but wastage of time intending to frustrate execution of the age-old decree and

that, it is liable to be dismissed for want of merits, which is good cause for extension of time.

For my consideration, the issue is whether the applicant has demonstrated good cause, the threshold required for granting of extension of time, the bottom line, as the Court pronounced itself on a number of occasions including **FINCA (T) Ltd & Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 at page 6 (unreported).

In the application at hand, as regards the ground of time-bar related illegality, it needs not to be overstated that once the issue of time-bar is raised, it touches on the jurisdiction of the court. We held so several times including in **Said Mohamed Said v. Muhsin Amiri and Another**, Civil Appeal No. 110 of 2020, **Rymond Obed Kitilya v. The Commissioner for Lands Ministry of Lands and 2 Others**, Civil Appeal No. 85 of 2016 and **Motto Matiko Mabanga v. Ophir Energy PLC and 6 Others**, Civil Appeal No. 119 of 2021 (all unreported). Just as it has been a long-established legal principle that, where a point of illegality, apparent on the face of it like here, jurisdiction or time bar for that matter is raised and sufficiently demonstrated as a ground for extension of time, it constitutes

good cause therefor. **See- The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) T.L.R. 182. However, the applicant's time-bar related complaint that, contrary to the order of the court dated 06/11/2006 the respondent's Land Appeal No. 70 of 2006 was refiled about ten years which is far ahead of the thirty days limitation in the DLHT was not sufficiently demonstrated and so, was the alleged point of illegality. I am saying so for three main reasons; **one**, the appeal might have been disposed of on 14/12/2018, that is to say about twelve years, or even sometimes long before. However, it did not necessarily mean that indeed, the said appeal had been refiled ahead of the said thirty day's limitation period. Therefore, the issue of it having been refiled after ten years is neither here nor there. **Two**, the applicant did not, for the purposes of computation of the limitation period depose in the supporting affidavit what exactly was the date of the refiling of the said appeal in the DLHT. If anything, on that one, the applicant's evidence came from the bar which counts nothing. That was our proposition in a number of cases. **See** – for instance **Farida F. Mbarak & Another v. Domina Kagaruki & 4 Others**, Civil Reference No. 14 of 2019 where we cited **Karibu Textile**

Mills Ltd. v. CG TRA, Civil Reference No. 21 of 2017 (both unreported). It is also noteworthy that, unlike in such other cases where evidence is adduced *viva voce*, any formal application like here, is built by evidence adduced by way of affidavits. In the former case, that evidence may be tested through cross examination and, in the latter case by an affidavit in reply. However, as above stated, the affidavit deposed by the applicant in support of the present application is arid of that crucial factual evidence. Ground number one of application is dismissed. It follows therefore that, the time-bar illegality is not real in the circumstances, much as, it is not apparent on the face of the impugned decision. In the absence of the date of refiling it therefore, it cannot be said, with certainty that the said appeal was refiled after expiry of the thirty days ordered by the court in Land Revision No. 1 of 2007.

On the second ground which is about sickness, indeed, the law is settled that once sickness is established and proved as to justify the delay, it constitutes sufficient cause for extension of time. However, with respect, the applicant did not make his case sufficiently, as the appended letter styled as a Medical Report from Ukerewe District Hospital shows that he fell sick

between July 2020 and July 2021 but he filed the present application on 18/05/2022 without any explanation about it and accounting for each day spent between July 2021 and 18/05/2022 when he filed the present application. If anything therefore, it is not the alleged sickness that hindered him to act timeously.

Finally, is about the High Court having dismissed and not striking it out, if at all that appeal was time-barred refiled, which order, according to him left with one option only, that is to challenge the impugned decision, as intended, by way of revision, as he quietly raised that point as illegality upon which to get an extension of time. I need not to belabor on this, much as I have no basis upon which to fault the court. Faced with a similar situation, in **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 (unreported), we held that:

*"Section 3 of the Act was applicable in dismissing the petition. In view of that position of the law, it is our conclusion that **the learned High Court Judge should have resorted to section 3 (1) of the Act to dismiss the complaint instead of sticking it out as she did**" (Emphasis added).*

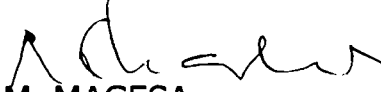
It follows therefore, that, dismissing the appeal as happened on 11/11/2019, with respect, the learned judge could not be more correct. Her decision was quite in order.

The upshot of it is that, the application lacks merits and it is hereby dismissed with costs. Ordered accordingly.

DATED at **MWANZA** this 8th day of December, 2022.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered on 8th day of December, 2022 in the presence of the applicant and the respondent in persons, is hereby certified as a true copy of the original.


C. M. MAGESA
DEPUTY REGISTRAR
COUTY OF APPEAL