IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 620/17 OF 2021

REGISTRED TRUSTEES OF THE HEALING MINISTRY

OF AGAPE INTERNATIONAL (HEMA INTERNATIONAL) .....APPLICANT

VERSUS

BENNY MWANG'ONDA .....1ST RESPONDENT

THE HEALING MINISTRY OF AGAPE ..... 2ND RESPONDENT

PASTOR BONIFACE ZACHARIA .....3RD RESPONDENT

(Originating from the decision of the High Court of Tanzania (Land Division) at Dar es Salaam)

(Hon. Kente, J.)

Dated the 2nd Day of February, 2015

in

Land Appeal No. 44 of 2013

.....

RULING

11th & 20th July, 2023

MAIGE, J.A.:

The District Land and Housing Tribunal for Kinondoni (the trial tribunal) dismissed, on 4th day of April, 2013, the first respondent's suit for vacant possession of the landed properties described as Plot No. MBB 15/MBO/140 and MBB15/MBO/141 at Mabibo area within the Municipality of Kinondoni (together, the suit property) as against the Registered Trustees of DHC (not a party to this application) and Pastor Boniface Zacharia, the third respondent in the instant application.

On appeal to the High Court, the decision of the trial tribunal was set aside and the suit property declared part of the estate of the late Robert Mwang'onda which was under the administration of the first respondent. That was on the 2nd day of February, 2015.

The applicant, though not a party to the judgments and proceedings in question, claims to have been affected by the decision of the High Court in so far as she is the owner of the suit property having purchased it on 14th October, 2004 and 17th October, 2005. She claims to have been made aware of the existence of the decision on 28th November, 2021 upon being officially informed by the third respondent. As the time within which to apply for revision had already expired at the time of being so informed, the applicant has by this application, applied for extension of time to apply for revision. The application has been preferred under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and is founded on the affidavit of Shingzen Felix Lyimo, the applicant's registered trustee. The first respondent filed an affidavit in reply while the rest of the respondents did not.

The grounds for extension of time according to the notice of motion are two. **One**, the applicant despite being the owner of the suit property was denied a right to be heard. **Two**, the applicant was unaware of the proceedings and decision of the High Court.

At the hearing of application, the applicant enjoyed the services of Mr. Desderi Ndibalema, learned advocate while the first respondent enjoyed the services of Mr. Jamhuri Johnson, also learned advocate. The second respondent, despite being duly served was absent. The third respondent who introduced himself as one of the registred trustees of the applicant appeared in person and, expressed right away his concession to the application.

Submitting in substantiation of the application, Mr. Ndibalema started by fully adopting the facts in the notice of motion and affidavit to read as part of his submissions. He submitted further that, the applicant could not timely lodge the intended application as it was not until on 28th November, 2021 when he became aware of the existence of the decision in question. He submitted, therefore that, the delay up to that particular juncture is excusable in the circumstances. He submitted further that, upon being informed as such, the applicant lodged the instant application just 12 days after. In his view, the applicant acted promptly to take necessary steps in pursuit of the intended application. Citing the authority in **Amour Habib Salim v. Hussein Bafagi**, Civil Application No. 52 of 2009 (unreported), he urged me to grant the application so that the applicant can enjoy her right to be heard.

Submitting in refutation, Mr. Jamhuri argued in the first place that extension of time cannot be granted for the reason of the applicant being denied a right to be heard because the applicant was not in existence in 2010 when the suit at the trial tribunal was being instituted. In support of that, the counsel placed reliance on the applicant's certificate of incorporation and annual returns in annexure "A1" and "A2" of the affidavit which indicate that the applicant was incorporated on 13th January, 2012. In the same way, the counsel submitted, the applicant having been incorporated in 2012, could in no way purchase the suit property in 2004 and 2005 as the sale agreements in annexure "B1" and "B2" of the affidavit suggest.

Mr. Jamhuri does not agree with the allegation by Mr. Ntibalema that the name of the second respondent was irregularly substituted in the place of the Registred Trustees of DHC. To the contrary, he submitted, the substitution of the names was properly done pursuant to the court order as reflected in the proceedings attached in the affidavit in reply as annexure BM-1.

The applicant, Mr. Jamhuri further submitted, cannot be heard saying that he was not aware of the decision in question while her registred trustee, the third respondent, has been a party to the proceedings right from the beginning.

In the final result, it was his contention that; as the applicant was not in existence at the time of the institution of the suit as well as at the time of acquisition of the suit property, the intended application for revision, assuming time therefor was to be extended, cannot have any chance of success. The grant thus will not serve any purpose and it should be rejected. Reference was made to the case of **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Application No. 8 of 2016** (unreported).

In his rejoinder submissions, Mr. Ndibalema in essence reiterated what are in his submissions in chief.

Having heard the rival submissions in line with what are in the notice of motion and the affidavits, it is obligatory in view of rule 10 of the Rules to consider if good cause for extension of time has been established. It has however to be observed that, the phrase "good cause" has not been defined by any written law. This, in my view, was not unintentional. For, as we held in **Reuben Lubanga v. Moza Gilbert Mushi and Two Others**, Civil Application No. 533/01 of 2021 (unreported), the discretion being equitable *"it cannot apply identically in all circumstances and as such the categories of good cause are never closed."*

Though the judicature has through case law established some tests for guidance in the exercise of the discretion, the same cannot be applied

religiously. The Court should as the facts and justice of the case may dictate, be flexible enough so as to make the decision just and equitable. In relation to this, we observed in the case of **Bertha Bwire v. Alex Maganga**, Civil Reference No. 7 of 2016 (unreported) which was referred in **Wambele Mtumwa's case**

(supra), as follows:

> *"It is trite that extension of time is a matter of discretion on the part of the Court and that such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case. Whilst it may not be possible to lay down an invariable definition of good cause, so as to guide the exercise of the Court's discretion, the Court is enjoined to consider, inter-alia, the reasons for the delay, whether the applicant was diligent and the degree of prejudice to the respondent if time is extended."*

It is also the law that aside from the justification for the delay, the Court has to consider whether the application *prima facie* raises some genuine questions worthy of being considered in the intended action. Thus, in **Reuben Lebunga's** case (supra), we observed:

> *"It is equally the law that, in deciding whether or not to grant an extension of time, the Court should not limit itself to the delay. Instead, it has to consider as well the weight and implications of the issues involved in the*

intended action and whether the same is prima facie maintainable. This is because, the order being equitable, it cannot be granted where it will serve no purpose or where it is a mere abuse of the court process".

In this case, the applicant is intending, if time is extended, to question the legality and validity of the decisions and proceedings of the trial court and the High Court on account that she was not joined therein and, therefore, denied a right to be heard despite having ownership interest on the suit property. The applicant associates herself with the suit property by virtue of the sale agreements in annexure "B1" and "B2" of the affidavit. However, it is not in dispute that, while the respective sale agreements were executed in 2004 and 2005, the applicant was, according to annexure AI of the affidavit, incorporated in 2012. More importantly, the suit at the trial tribunal was commenced in 2012 when the applicant was yet to be incorporated. Therefore, the claim that the applicant was denied a right to be heard in not being joined in the proceedings which was instituted before her legal existence is *prima facie* superfluous.

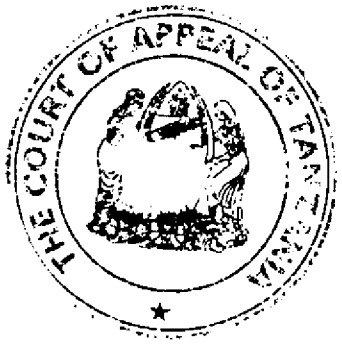
On top of that, while the name of the applicant is "The Registered Trustees of the Healing of Agape International (Hema International)", in the sale agreements in question, the name of the purchaser is "The

Registered Trustees of the Healing Ministry of Agape". The words "International" and "Hema International" in bracket are not there. There is no factual clarification of the said difference in the affidavit either. Obviously, therefore, an order for extension of time, assuming it is granted, will not serve any purpose as the intended application for revision is *prima facie* unmaintainable. The application is henceforth dismissed with costs.

DATED at **DAR ES SALAAM** this 19th day of July, 2023.

I. J. MAIGE
JUSTICE OF APPEAL

The Ruling delivered this 20th day of July, 2023 in the Mr. Desidery Ndibalema, learned counsel for the Applicant and Mr. Vallery Luanda learned counsel for the 1st Respondent, and 2nd and 3rd respondent was absent duly served is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL