

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

**CIVIL APPLICATION NO. 280/17 OF 2019**

**MARTHA JOHN NCHAGWA .....APPLICANT**

**VERSUS**

**WILLYBROAD MWEYUNGE REVELIAN @ MUTOLE..... 1<sup>ST</sup> RESPONDENT**

**LIPINA REBECCA MAKWINYA (A Legal – Representative of  
Gervas Faustin Makwinya Deceased)..... 2<sup>ND</sup> RESPONDENT**

**(Application from the decision of the High Court of Tanzania at  
Dar es Salaam)**

**(Kitusi, J.)**

**dated the 2<sup>nd</sup> day of May, 2018**

**in**

**Land Case No. 82 of 2017**

.....

**RULING**

3<sup>rd</sup> & 8<sup>th</sup> November, 2023

**MLACHA, J.A.:**

The applicant Martha John Nchagwa, filed an application by a notice of motion under Rule 10 and 48(3) of the Court of Appeal Rules, 2009 (the Rules) seeking extension of time within which to file an application for revision of the records of the High Court in Land Case No. 82 of 2017. The notice of motion is supported by an affidavit of the applicant stating the background of the matter and the grounds upon which the application is made. The respondents are Wilbrod Mweyunge Revelian @ Mutole and Lipina Rebecca Makwinya (a legal representative

of Gervas Faustine Makwinya), hereinafter referred to as, the first and second respondents respectively.

It was stated in the affidavit that the applicant was legally married to the first respondent in a ceremony celebrated at Mbezi Beach Roman Catholic Church on 3<sup>rd</sup> September, 2010. Following their marriage, they bought plot No. 94, Block C Boko, Kinondoni, Dar es salaam and built a house (the suit land), which is occupied by the family to date. That somewhere in between the marriage encountered problems and the first respondent walked out of the matrimonial home and moved to an unknown destination leaving the applicant and children behind. Later on the applicant learnt that, the first respondent had obtained a consent judgment with Gervas Faustine Makwinya at the High Court (Dar es salaam District Registry) on 10<sup>th</sup> April 2018 in Land Case No. 82 of 2017, vesting ownership of the house to the said Gervas Faustine Makwinya. This was done without notice to the applicant despite being the wife and having an interest in the house. On further inquiry, it was noted that Mr. Gervas Faustin Makwinya could not have entered into an agreement leading to the consent judgment on 10<sup>th</sup> April, 2018 because he was already dead on that date. Reference was made to the letter of appointment of the second respondent and the death certificate which were attached showing that the said Gervas Faustine Makwinya died on

28<sup>th</sup> January 2012, more than six year back. She sensed a foul play and complained to the Chief Justice for redress, hence the advice leading to the filing of this application. The applicant is seeking extension of time on grounds of illegality of the decision of the High Court.

The first respondent did not enter any appearance or file any affidavit in reply. The proceedings are conducted in his absence. The second respondent filed affidavit in reply and did not have objection to the application.

When the application was called for hearing Messrs. Constantine Makata and Tibiita Muganga, learned advocate appeared for the applicant while Sindilo Lyimo, learned counsel appeared for the second respondent. Mr. Tibiita made a submission in support of what is in the notice of motion and affidavit, the contents of which have already been disclosed above. Counsel argued the Court to grant extension of time to file the revision arguing that, the decision of the High Court was obtained by fraud and misrepresentation making it illegal. Mr. Sindilo had no objection.

I take note on the provisions under which the application is brought. Rule 10 gives the Court discretionary powers to extend the

time upon good cause being shown. Rule 48(1) gives the procedures; the manner in which the application should be brought.

Rule 48(1) has a requirement for applications to the Court to be made by notice of motion supported by an affidavit. It also talks of exceptions contained in sub rule (3). We have two scenarios in the exceptions; one, applications made in the course of hearing can be made informally. These are like applications for adjournment or applications seeking to withdraw the appeal or application. Sub rule (3) allows them to be made informally without presenting the notice of motion and affidavit and orders can be made accordingly. Two, applications made by consent of parties, like an application for adjournment or an application to mark the appeal settled. They can be made informally in the course of hearing the appeal or application.

The jurisdiction of the Court was accessed by a notice of motion supported by an affidavit. This was in compliance with rule 48(1). Counsel did not have any issue with this aspect. I find that the law was fully complied with.

Rule 10 talks of good cause and the discretion of the court. The issue is whether the applicant has advanced any good cause to justify the exercise of the discretion of the Court to extend the time. Usually

the discretion of the Court is exercised where there is an account for each day of delay or illegality of the proceedings of the lower court. The applicant is also expected to act diligently without negligence on his part. See **Tanga Cement Co. Ltd v. Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 at page 5 and **V I P Engineering and Marketing Limited and two others v. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8|2006 1 at page 18 to mention a few.

The applicant has pleaded illegality and made submissions to show that the proceedings and decision of the High Court were illegal. She has pointed out two areas; One, that Gervas Faustine Makwinya could not have been a party in Land Case No. 82 of 2017 and executed the consent agreement because he had already died having passed away on 28/01/2012. Two, that the first respondent did not have capacity to enter the consent agreement which vested ownership of the house to the second respondent without involving the applicant because she is his wife and participated in buying the plot and building the house. She is also living in the house with their family.

Counsel for the applicant argued the Court to grant the application based on the above grounds. Counsel for the second respondent did not have any objection.

On my part, having considered the grounds stated in affidavit and documents attached to it, and having considered counsel's submissions, I have the view that, the applicant has managed to show that the proceedings and the judgment of the High Court made in land case No. 82 of 2017 have an element of illegality giving merit to the application. I proceed to grant the application. The applicant is given 30 days within which to file the revision. She is awarded costs which shall be paid by the first respondent.

It is so ordered.

**DATED at DAR ES SALAAM** this 7<sup>th</sup> day of November, 2023.

L. M. MLACHA  
**JUSTICE OF APPEAL**

The Ruling delivered this 8<sup>th</sup> day of November, 2023 in the presence of Ms. Tibiita Muganga, learned Counsel for the Applicant, Mr. Sindilo Lyimo, learned Counsel for the 2<sup>nd</sup> Respondent and in the absence of the 1<sup>st</sup> Respondent is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**