

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

CIVIL APPLICATION NO. 334/08 OF 2022

MAREMA MICHAEL MASWI APPLICANT

VERSUS

MSAFIRI JUMANNE MASHAKA 1ST RESPONDENT

SOLOLO JUMANNE YAMLINGA 2ND RESPONDENT

ALFRED JUMANNE YAMLINGA 3RD RESPONDENT

BURUGU JUMANNE YAMLINGA 4TH RESPONDENT

MARIA JUMANNE YAMLINGA 5TH RESPONDENT

PRISCA JUMANNE YAMLINGA 6TH RESPONDENT

**(Application for extension of time to apply for revision of the
judgment of the High Court of Tanzania at Mwanza)**

(Tiganga, J.)

Dated the 4th day of June, 2021

in

PC. Civil Appeal No. 85 of 2020

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RULING

5th & 14th December, 2023

RUMANYIKA, J.A.:

Under rule 10 of the Tanzania Court of Appeal Rules, 2009 ("the Rules"), Marema Michael Maswi ("the applicant") seeks extension of time within which to apply for revision, on the judgment of the High Court (Tiganga, J.) dated 04/06/2021. The notice of motion has raised one ground. The application is

supported by an affidavit sworn by Marcema Michael Maswi. It has been contested through affidavits in reply sworn by Msafiri Jumanne Mashaka, Sololo Jumanne Yamlinga (Administrator of the Estate of the Late Jumanne Yamlinga), Alfred Jumanne Yamlinga, Burugu Jumanne Yamlinga, Maria Jumanne Yamlinga and Prisca Jumanne Yamlinga ("the 1st, 2nd, 3rd, 4th, 5th and 6th respondents"), respectively.

The facts giving rise to this application, gathered from the record may be stated, albeit briefly as follows: All began at Ilemela Primary Court (the Probate Court) vide Probate Cause No. 20 of 2009. That court, agree with the 2nd respondent who had sold a house on Plot No.162 Block U, at Mitimirefu area within the district of Nyamagana, Mwanza region, in discharging his duty as the administrator of the estate. As the 1st respondent was not satisfied, and following a number actions including *suo motu* review by Ilemela District Court, finally, he approached the High Court vide Pc. Civil Appeal No. 85 of 2020 vainly. That court upheld the decision of the Probate court, directing the 2nd respondent to hand over the house to the 1st respondent.

The applicant who was a stranger to all the previous proceedings was aggrieved. He decided to challenge the said

decision, but late. He is before me seeking extension of time to file revision, as highlighted above, to protect his alleged interest in the house.

At the hearing of the application, Mr. Anthon Nasimire learned Counsel advocated for the applicant whereas Mr. Steven Makwega also learned counsel represented the 1st respondent. The 2nd-6th respondents appeared in person without representation.

Arguing the application, Mr. Nasimire began by adopting the supporting affidavit, particularly, paragraphs 6, 7, 8, 10 and 11, the respective notice of motion and the applicant's written submission filed on 02/10/2022. He contended that, if this application is granted, the applicant will apply to revise the impugned decision on two grounds: **One**, that, although the applicant was not a party to the previous proceedings, it was wrong for the High Court to direct handing over his house to the 1st respondent, without hearing him. Further, he asserted that, he became aware of the impugned decision on 15/07/2022, on arrival from his safari, but the time allocated for filing revision of revision by that time had already lapsed hence, this application. **Two**, as the 1st respondent was not a party in the District Court, and therefore, the former should have

assailed the decision in the High Court, by way of revision instead of appealing, as it wrongly did.

In the end, he urged me to exercise the Court's discretion and grant the application with costs.

Responding, Mr. Makwega began by adopting the 1st respondent's affidavit in reply. He contended that, the applicant has not assigned good cause for granting extension of time. As regards *locus standi* of the 1st respondent's in the High Court, Mr. Makwega argued that, the applicant's name appeared in the proceedings for the first time in Civil Review No. 1 of 2020 which was opened by the District Court of Ilemela, *suo motu*. The 1st respondent was not satisfied by the resultant decision and therefore, appealed in the High Court. Mr. Makwega therefore, asserted that, the issues of illegality of the decision should have not been raised.

The 2nd - 6th respondents were unusually brief in their submissions. They unanimously supported the application, thereby stating in common, that it is through revision proceedings where the parties would be heard, for the interest of substantive justice, if the application is granted.

Having considered the notice of motion, the parties' affidavits and submissions, the issue for my consideration and determination

is whether the applicant has made a case to warrant the granting of extension of time.

It is trite law that, where there is such a delay, a party seeking extension of time to do any such permissible acts, has to account for each day of the delay. For clarity, I find it instructive to reproduce rule 10 of the rules, for guidance, as follows:

"The Court may, upon good cause shown, extend the time limited by the Rules or by any decision of the High Court or tribunal for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of that act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

With regard to ground number one, it has not been seriously disputed that, the applicant became aware of the impugned decision on 15/07/2022. Equally, it is undeniable fact that, he instituted the instant application promptly on 04/08/2022, which is about nineteen days later, after some preparation. And then, he found his way to the Court.

The other reason assigned by the applicant to warrant the grant of extension of time, is an illegality in the impugned decision, on account of the 1st respondent having assailed the decision of the High Court on a matter to which he was not a party, instead of seeking to revise it.

The above cited rule 10 of the Rules sets forth good cause to be shown or such other material to be provided by the applicant. Time and again, this principle has been reiterated by the Court. See for instance: the **Regional Manager TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2007 (unreported). Equally, it is noteworthy that, a condition for the granting of extension of time is dependant of the Court's discretion. I am aware, that, there is no fast and hard rule for what amounts to good cause. It depends on the circumstances of each particular case and the material presented before to it. Through a number of its decisions, this Court has reiterated the guide kit, as it was stated, for instance, in **Kalunga & Company Advocates Ltd v. NBC Ltd** [2006] T.L.R. 235 and the **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 (unreported). However, it is trite law that, when the Court is exercising its discretion to extend time, there are some underlying

factors that have to be considered: **One**; the length of delay, **two**, the reason for delay and **three**, the decree of prejudice that the respondent may suffer, if the application is granted.

As hinted earlier, since the decision Intended to be challenged by the applicant was handed down on 04/06/2021 certainly, consistent with rule 65 (4) of the Rules, he was required to file an application for revision within sixty (60) days of that decision, on or by 04/07/2021 latest. However, he acted promptly, as he filed the instant application about nineteen days after he became aware of that decision, as highlighted above. He is not to blame. He was hindered by reasons beyond his control. Of essence is that this fact has not been seriously challenged by the respondent. See-our unreported decision in **Patrick Magolosi Mongella v. The Board of Trustees of the Public Service Pensions Fund**, Civil Application No. 1999/18 of 2018.

Regarding the issue of illegality, it is not disputed that, from its inception, the applicant was not a party to any of the said proceedings previous, including one from which the impugned decision arises. The 1st respondent may, or may not have purchased the disputed house next to, or after the applicant, but the fact remains that, the parties are at war, with regard to who between

the two is the rightful purchaser. I am aware of the legal principle that illegality, as a ground for extension of time is not a bottomless pit. It has to be apparent on the face of the Impugned decision and not one which may need evidence or long drawn arguments. However, the circumstances of this case are exceptional to the general rule. As such, with the prevailing global dynamics in the socio-economic circumstances of the day, categories of illegality of the courts' decisions are never closed. At times, there might be express or implied illegality, much as the degree required to exhibit it, is the one which is reasonable and probable, and not which is beyond reasonable doubt proved. It does not need to be overstressed therefore, that, any reasonably alleged denial of a right to be heard, which is readily supported by the 2nd – 6th respondents, as hinted earlier, constitutes good cause for extension of time.

Lastly, is about the 1st respondent allegedly not having not been a party in the District Court but, he appealed the resultant decision in Pc Civil Appeal No. 85 of 2020 in the High Court. With respect, I decline to purchase Mr. Nasimire's allegation, as hereby do, because that fact was not backed with the record. As such, I agree with Mr. Makwega that, the 1st respondent came to the picture, for the first time through Civil Review No. 1 of 2020 in the

Ilemela District Court. This decision aggrieved him and he rightly appealed in the High Court, without any avenue. This ground is dismissed.

I am settled in my mind that, the applicant's delay was not inordinate, given its length, and the reason for the delay given. Most importantly, is for the 1st respondent who has not even attempted to state any degree of prejudice that he may suffer, if this application is granted.

Consequently, the application has merits which we hereby grant with costs.

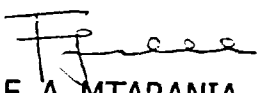
It is so ordered.

DATED at MWANZA this 14th day of December, 2023.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered on this 14th day of December, 2023 in the presence of the appellant in person and the second and sixth the respondents, while the first, third, fourth and fifth respondents were absent is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL