

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IRINGA DISTRICT REGISTRY)**  
**(LAND DIVISION)**  
**AT IRINGA**

**MISC. LAND APPLICATION NO. 01 OF 2020**

(Originating from Miscellaneous Land Application No. 78 of 2019  
and Land Application No. 48 of 2017 at District Land and  
Housing Tribunal at Iringa)

<b>MELINA MIHWELA</b>	.....	<b>1<sup>ST</sup> APPLICANT</b>
<b>COSTA DALLU</b>	.....	<b>2<sup>ND</sup> APPLICANT</b>
<b>MWAHIJA MIHWELA</b>	.....	<b>3<sup>RD</sup> APPLICANT</b>
<b>VERSUS</b>		
<b>MASHAKA KABOGO</b>	.....	<b>RESPONDENT</b>

*Date of Last Order:* 16/04/2020

*Date of Ruling:* 15/05/2020

**RULING**

**MATOGOLO, J.**

This is an application by the applicants Melina Mihwela, Costa Dallu and Mwachija Mihwela for an order that the court be pleased to enlarge time to allow the applicants to file an appeal out of time. They also pray for costs and any other order as the court deems fit and just to grant.

The respondent in this application is Mashaka Kabogo who was the successful party in the District Land and Housing Tribunal of Iringa.

The application was made under Section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2002 and is supported by an affidavit of Dr. Asheri Utamwa advocate for the applicants.

The brief background of the dispute is that the suit land is located at Lundamatwe village Iole Ward within Kilolo District. It has estimated value of Tshs. 4,000,000/= measuring about 11.5 acres. The said land was previously owned by the late Maulisia Jumbembaya Kidava who was given that land by the late Manyilenga Mwihela as a gift, that was in 1976. It is said that the late Maulisia Jumbembaya Kidava continued using the said Land until her death. Mwinyilenga Mwihela died in 1993. But witnessed the siblings of Maulisia Jumbembaya Kidava enjoying possession of the land. But the problem arose in 2015 when the appellants and their agents wanted to sell the reserved part of the land. The respondent unsuccessfully sued the 3<sup>rd</sup> appellant at the Ward Tribunal of Ilambilole for lack of *locus standi*. In May, 2017 appellants knowingly that the land belongs, to the late Maulisia Jumbembaya Kidava, entered on the suit land and cultivated the same the act which resulted to this suit.

In his affidavit, Dr. Utamwa gave the reason for the day.

The parties were represented by counsel. While Dr. Asheri Utamwa represented the applicants, the respondent was represented by Mr. Suleman Kaganda learned advocate.

The application was argued by way of written submissions. The parties abided to the filing schedule set out by the court.

In his submission in support of the application, Dr. Asheri Utamwa learned advocate essentially contended that extension of time in filing an

application can be granted under Section 14(1) of the Law of Limitation Act, Cap. 89 R. E. 2002, upon showing "sufficient cause" for delay in filing the application.

He said although the term "sufficient cause" has not been defined but in order for extension of time to be granted, the application must have been brought in compliance with the procedure, explaining reasons for delay, and the applicant must show diligent commitment in pursuing the subject case. But he further submitted that even where there is no sufficient cause of delay extension of time can be granted where is an illegality of decision sought to be challenged as it was held in the case of ***Kalunga and Co. Advocate vs. National Bank of Commerce (2000) TLR 235.***

He argued that it will be unfair for the applicants to be required to pay much money and leave their own land on reasons purely based on legal technicalities which will result in violation of Article 107A (2)(d) of the Constitution of the United Republic of Tanzania.

He said the applicants being poor peasants and by being unrepresented in Land Application No. 48 of 2017 after delivery of judgment on 20<sup>th</sup> December, 2018 they found the matter involved legal technicalities and since they are lay persons on legal matters, immediately on 5<sup>th</sup> January, 2019 they consulted a lawyer to assist them but his invoice was too high for them.

They were supplied with copy of judgment on 25<sup>th</sup> March, 2019 and were able to engage a lawyer on 27<sup>th</sup> May, 2019. It is when the lawyer found the matter was time barred.

It is the contention by the learned advocate that despite the reason given for the delay, the applicants, have been diligent to pursue for their right. Immediately after the judgment was delivered they started to collect fees to pay the advocate by instalments, so as to meet the advocates invoice. Eventually they were able to engage him on 27<sup>th</sup> May, 2019 and the advocate immediately filed Miscellaneous Land Application No. 78 of 2019 the same day asking the District Land and Housing Tribunal to revise its decision in Land Application No. 48 of 2017 and reverse its decision. But they also applied for an order for stay of execution vide Miscellaneous Land Application No. 79 of 2019 on 8<sup>th</sup> March, 2019.

But both applications were dismissed for the sole reason that the Tribunal had no jurisdiction to determine the application for revision. The applicants applied for copies of ruling and order for the dismissed application on 07/10/2019. However they were supplied with only an order on 17/01/2020 hence this delay to file. It is the submission by Dr. Asheri Utamwa that the Land Application No. 48 of 2019 which was decided on 20/12/2018 is tainted with numerous illegalities but the applicants who were unrepresented they discovered that defects in the decision late. To that end, the learned counsel cited the case of ***Pascal, Arusha vs. Mosses Mollel***, Civil Application No. 574 of 2017

It is the argument by the learned counsel that there were clear illegalities in the Land Application No. 48 of 2017. Firstly the appointment of administrator was time barred on the ground that in 1976 Maulisia was given the land as a gift and later on 24/12/1987 she died. The appointment

and authorization of the respondent as an administrator of the estates was on 24/10/2016, 29 years later.

But under Section 9(1) of the Law of Limitation Act provides that where a person institutes a suit to recover land of deceased person, whether under the will or intestacy and the deceased person was, on the date of death in possession of the land and was the last person entitled to the land to be in the possession of the land, the right or action shall be deemed to have accrued on the date of death.

Secondly the dismissal of the application for revision was improperly done by trial Tribunal. The remedy for the application which was improperly filed was to strike it out and not to dismiss it as the same was not determined on merit.

Thirdly, among the reasons of the decision of the trial Tribunal was not from the evidence by the applicants the size of the land that was given for temporary basis to the respondent's mother by their late father was one acre. But on the visit to the land by the Tribunal, the land was seen to be three acres, despite the fact that they had an administrator of the estates, he did not claim back the land in his livelihood. He said the question is, under what ground the administrator could claim the land while the land was not occupied by any other person believing that the respondent knew that the said land belongs to the applicants. The learned counsel said illegality in the judgment is one of the grounds for extension of time and cited the case of ***VIP Engineering and Marketing Limited, Tanzania Revenue Authority and the Liquidator of Tri-Communication***

***(Tanzania vs. Citibank Tanzania Limited,*** consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported).

Dr. Utamwa prayed to this court to grant the application for the applicants to appeal out of time with costs.

On his part Mr. Suleman Kaganda learned advocate first adopted the respondent counter-affidavit. He submitted that the applicants' application intends to waste dedicated time to this court as the applicants inordinately delayed to file an appeal for one year but there is no sufficient cause has been shown by the applicants in their affidavit. He said the delay rendered an appeal hopelessly time barred and supported his argument by citing the case of ***Meis Industries Limited and 2 Others vs. Twiga Bank Comp,*** Misc Commercial Case Cause No. 243 of 2015.

He submitted that the reasons advanced by the applicants' advocate are frivolous and neither criterion has been clearly met by the applicants as contended by their counsel in his written submission regarding condition stipulated in ***Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania,*** Civil Application No. 02 of 2010.

It is the submission by the learned counsel for the respondent that the dismissal of Misc. Land Application No. 78 of 2019 and Misc. Land Application No. 79 of 2019 before the District Land and Housing Tribunal for Iringa as contended by the leaned counsel is sheer negligence on the part of the leaned counsel for the applicants which is not sufficient cause as it was held in the case of ***Calico Textiles Industries Limited (1983) vs. Pyaraliesail Premji (1983) TLR 28.*** The learned counsel for the

respondent also cited the case of ***Godwin Ndewasi Karoli Ishengoma vs. Tanzania Audit Corporation (1998) TLR 200***, to explain that rules of the court must be obeyed in order to justify extending time in which some steps in procedure requires to be taken there must be some material on which court can excise its discretion.

The learned counsel further submitted that the learned counsel for the applicants misconstrued the gist of the word "illegalities" by mixing up things as in the instant application. He said the applicants in their chamber summons sought an order of this court for extension of time to file an appeal out of time. While in his sworn affidavit in support of the application, counsel for the applicants asked this court to revise decision of the trial Tribunal. However no in any how is explained that there was an error or parties were deprived right to be heard, or the decision is a nullity or trial Tribunal had no jurisdiction or the judgment was procured illegally or by fraud has been explained by the counsel for the applicants. In his submission he said the counsel for the applicants failed to distinguish circumstance for application for revision which do exist before this court and current application for extension of time to appeal out of time.

The learned counsel cited the case of ***John William Mpai vs. The Republic*** Criminal Appeal No. 76/10/2015 CAT at Dar es Salaam while referring the case of ***Elia Anderson vs. Republic***, Criminal Application No. 02 of 2013 where the court held that the applicant failed to show good cause warranting extension of time to lodge review application out of time.

In the same manner the learned counsel submitted that the applicants through their advocate have failed to show good cause for

extension of time to appeal out of time and prayed for the application to be dismissed with costs.

In rejoinder the applicant's counsel has reiterated what he had submitted in his submission in chief. He distinguished the cases cited by the respondent's counsel.

Having read the submission by the learned counsel and after go through the trial Tribunal record, first of all I must point out my disappointment by Dr. Asheri Utamwa style of making reference to decided cases without supplying copies for unreported cases as I was unable to read them and see the principles laid therein.

There is no dispute that the applicants have delayed to file their appeal. It means therefore that unless their application for extension of time is granted then they will be able to file their appeal.

Understandably grant of extension of time for a party to appeal out of time is within the discretion of the court.

This discretion of course is to be exercised judicially. The same cannot be with held unreasonably unless there in good reason for doing so. But it should be noted also that granting of extension of time is not automatic, it is until when the applicant has shown "*sufficient cause*" of delay. What amounts to sufficient cause has not been defined under the law, but case laws has tried to define the same which include factors such as whether or not the application has been brought promptly, the absence of any or valid explanation for the delay, lack of diligence on the part of the applicant. That was held in the case of ***Tanga cement co. Ltd vs.***



***Jumanne D. Masangwa and Another***, Civil Application No. 06 of 2001 CAT (unreported).

The reasons for delay explained by the counsel for the applicants in his written submission include the fact that the applicants are poor peasants and were unrepresented in the Land Application No. 48 of 2017. After delivery of the judgment they found the matter involved legal technicalities such that they have to engage a lawyer. But that was not easy due to the high bill given to them by the lawyer of their first choice so they have to source out fund to enable them engage the said lawyer. But also they wrongly lodged an application for revision, Miscellaneous Land Application No. 78 of 2019 but both applications were dismissed on 30/09/2019. Then the applicant applied for copies of ruling and order of the District Land and Housing Tribunal before they have lodged this application.

It was correctly submitted by Mr. Suleman Kaganda learned counsel for the respondent that dismissal of the two applications above mentioned was due to sheer negligence on the part of their advocate which do not constitute "sufficient cause" as it was held in ***Calico Textile Industries Limited 1983*** (supra) see also in case of ***A. H. Mkimbila and 2 Others vs. John Mwanguku***, Civil Application No. 13 of 2005 CAT (unreported).

In fact the applicants have failed to advance sufficient cause of delay as it is trite law that the applicants were to account for each day of delay. There is a chain of authorities to this requirement of the law. These include Civil Application No. 342/01/2017 ***Bharya Engineering Contracting Company Limited vs. Hamoud Ahmed Nassor***, Civil Application No.

265/01 of 2016 ***Jehangir Azizi Abdulrasul vs. Rhino Auction Mart and Court Broker, MS Renaud's Company Limited vs. Baiozi Ibrahim Abubakari and Bibi Sophia Ibrahim*** and ***Lyamuya Construction Co. Limited*** (supra) to mention a few.

The applicants have also relied to an exception to the general rule, that where there is an illegality in the decision sought to be challenged that amount to sufficient cause and cited the case of ***Kaiinga and Co. Advocate*** (supra). But in order for this to be accepted as ground for extension of time the alleged illegality must be apparent and not to be looked at the merit of the case as it was held in the case of ***Zuberi Nasoro Mo'd vs. Mkurugenzi Mkuu Bandari Zanzibar***, Civil Application No. 93/15 of 2018 CAT (unreported).

However before I dig deep on the issue of illegality of the decisions of the District Land and Housing Tribunal, there is another important aspect in this application which was not addressed by the learned counsel from both sides. This relates to the provision used by the applicants in their application for extension of time within which to appeal out of time. The applicants cited Section 14(1) of the Law of Limitation Act (Cap. 89 R.E 2002) and Section 93 of the Civil Procedure Code (Cap. 33 R.E. 2002). However the intended appeal originated from the District Land and Housing Tribunal in Land Application No. 79 of 2017. There is no doubt that the land disputes are governed by the Land Disputes Court Act, (Cap. 216 R.E. 2020). The Law has a specific provision catering for application for extension of time within which to appeal out of time, that is Section 41(2).

I therefore invited the learned counsel to address me on that aspect and they conceded that they did not address their mind to that provision.

According to Section 41(2) of the Land Disputed Court Act, as amended by the written Laws (Miscellaneous Amendment) Act (No. 02) of the 2016 the time limitation for appeals to the High Court from the District Land and Housing Tribunal exercising original jurisdiction is 45 days. But a party who fails to lodge his appeal within 45 days from the date of the decision complained of may apply for extension of time. After the above mentioned amendment, Section 41(2) of Cap. 216 provides as follows:-

*"41(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order.*

*Provided that the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days"*

Although similar words are found in Section 14(1) of the Law of Limitation Act, but this is a specific provision which the applicants ought to have cited as enabling provision in their application and not Section 14(1) which is general rule. It is trite law that where there is a specific law providing for time Limitation for any proceeding then general law cannot apply. This was also held in the persuasive decision of the Court of Appeal of **Kenya in the case of Speaker of the National Assembly Vs. Karume [2008] 1KLR 425** in which it was held:-

*“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed”.*

As the Law of Limitation does not apply to land matters originated from the District Land and Housing Tribunal citing a provisions under that Act this court is not properly moved. The applicants have to cite the provision from which the court derives its powers to entertain their application.

The Court of Appeal of Tanzania in the case of ***Mariam Ismail vs. Salumu H. Machwiko***, Civil Appeal No. 42 of 2006 was faced with similar situation, has this to say:-

*“Her intention is to move the court for an order that she be allowed to apply for revision out of time under Rule 8 of the Court of Appeal Rules, 1979. However she has cited Rule 9(2) (b) of the Court of Appeal Rules, 1979 which is applicable for stay of execution of a decree. In that respect she has not properly moved the court because she has not cited the relevant provision from which the court derives the powers to hear and determine the application”.*

It follows therefore that this court is not properly moved to exercise powers conferred to it to hear and determine the application. The application is therefore incompetent the same is hereby struck out with costs.

  
**F.N. MATOGOLO**  
**JUDGE**  
**15/05/2020**

**COURT:**

Ruling delivered in the presence of the parties and in the presence of Dr. Asheri Utamwa and Mr. Suleman Kaganda learned advocate for the applicants and respondent respectively.

  
**F.N. MATOGOLO**  
**JUDGE**  
**15/05/2020**