

**IN THE HIGH COURT OF TANZANIA**

**AT SUMBAWANGA**

**APPLICATION FOR REVISION NO. 3 OF 2019**

**SIMON PETER KIMITI.....APPLICANT**

**VERSUS**

**JOSEPH BALTAZAR KAMEKA.....1<sup>st</sup> RESPONDENT**

**ALFRED MANYIKA .....2<sup>nd</sup> RESPONDENT**

**PAUL J. KIMITI.....3<sup>rd</sup> RESPONDENT**

**GEORGE SING'OMBE.....4<sup>th</sup> RESPONDENT**

**RULING**

**2<sup>nd</sup> July – 11<sup>th</sup> August 2020**

**MRANGO, J.**

In this application, the applicant, Simon Peter Kimiti seeks for an order granting him extension of time to institute an application for revision. The applicant intends to apply to this court to revise the decision of the District Land and Housing Tribunal of Sumbawanga at Rukwa in Land case No. 02 of 2013.

The application, which has been brought under **Section 14(1) of the Law of Limitation Act, 1971, Cap 89 RE 2002** is supported by the applicant's affidavit sworn on 11/11/2019.

When the matter was called for hearing, the first respondent raised a preliminary objection which was sorted out by this court in favour of the applicant and hence the determination of this application at hand.

Both camps settled on battling out this application by way of written submissions, whereas the applicant was enjoying the services of Mr. Deogratus Sanga, learned advocate while the 1<sup>st</sup> & 4<sup>th</sup> respondents were represented by Mr. Erick Nyato learned advocate, and again the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were absent.

Submitting in support of this application, Mr. Sanga firstly prayed to adopt the contents of their affidavit sworn by the applicant himself which contains the grounds for extension of time and on top of it by way of adding value they submitted that the applicant relies on two grounds for extension of time; **firstly**, that the applicant had no knowledge of existence of Land Application No. 2 of 2013 in the District Land and Housing Tribunal for Rukwa (hence forth DLHT). **Secondly**, the applicant contends that the impugned decision is tainted with illegality and irregularities and it has prejudicated the applicant contrary to the principles of natural justice.

He furtherly submitted that it is not in dispute that the applicant was not joined in the trial case as a result he was summoned before the trial tribunal consequently he was condemned unheard because the execution led to involve the land which the applicant believes he was bonafidely and lawfully allocated to him by responsible land authorities. Mr. Sanga added that, when the Court of Appeal was confronted with a similar scenario, it considered that as an illegality of which it is sufficient to save as a ground for extension of time. To make an emphasis, the learned counsel cited the case of **THE REGISTERED TRUSTEE OF SOS CHILDREN'S VILLAGES TANZANIA Vs. IGENGU CHARLES & 9 OTHERS** Civil Application No. 80/80 of 2017 CAT at Mwanza (Unreported) at pages 8,9 and 10.

He furtherly argued that, in this case it was not only the illegality of being condemned unheard, but also the trial proceedings reveal that the necessary parties (applicant and the Sumbawanga Municipal and/or the Commissioner for lands) were not made parties to the proceedings, a fault which if the Court shall be satisfied in the intended application for revision, the validity of the proceedings shall be at stake. He added that, the proceedings of the trial court further reveal a serious disturbing feature as the counsel for 1<sup>st</sup> respondent acted as an advocate and witness in the same case, once this illegality is sustained in the intended application for



revision, the same is fatal to the proceedings. Mr. Sanga also addressed this court that, the counsel for the 1<sup>st</sup> respondent was acting as a recognized agent and that he intends to question his validity in the intended application for revision as the same seems not to have been registered and/or dully paid stamp duty required by law. In addition to that, he argued in their perusal of the application which instituted the matter in the trial Court, the same seems to have neither been endorsed nor baring the name of the drawer and or it contains the defective attestation clause the defect which if sustained in the intended application for revision is likely to fault the same for being unrecognized document in the spirit of **Section 44 (2) of the Advocates Act Cap 341 R.E 2019**.

Mr. Sanga continued to address this court that, it is settled principle that allegation of illegality on the decision intended to be challenged is a sufficient reason for extension of time even if there is no other reason as was held in the case of **THE PRINCIPLE SECRETARY MINISTRY OF DEFENSE AND NATIONAL SERVICE Vs. DURAM VALAMBHIA [1992] TLR 387** and the position was also adopted by the this court in the case of **THE REGISTERED TRUSTEE OF SOS CHILDREN'S VILLAGES TANZANIA Vs. IGENGE CHARLES & 9 OTHERS** (supra). He submitted, from a plethora of authorities on this accept, he prays for this

honorable court to grant the applicant the extension of time to file an application for revision.

Lastly, the counsel for the applicant submitted that although the above illegalities alleged are sufficient grounds for extension of time, further to that in the instant matter the applicant was also not aware at all of any proceedings against his plot until he was availed with the demolition order during the process of execution. He added that, the 1<sup>st</sup> respondent had a legal duty to identify all the prospective defendants over the disputed land, failure of which the applicant could not file his revision within statutory time hence this stand as sufficient ground for extension of time. Mr. Sanga concluded that in the upshot therefore, basing on their well arguable submission with the principles and law sub stained herein, they therefore invite this honorable court to allow this application with costs.

In response to Mr. Sanga's submission, Mr. Nyato learned counsel representing the 1<sup>st</sup> and 4<sup>th</sup> respondents submitted that the 1<sup>st</sup> respondent prays all grounds in the sworn counter affidavit be adopted to form part of the submission. He argued that, the applicant alleges that the reason which made him fail to file the application for revision within time is lack of



knowledge on existence of the suit land in the tribunal and illegalities in the decision of the trial Tribunal.

Mr. Nyato continued to argue that it is a trite law that there can only be one reason to warrant the Court grant extension of time and that is existence of good and sufficient cause as it was held in **BENEDICT MUMELO Vs. BANK OF TANZANIA (2006) 1 EA 227** the Court of Appeal of Tanzania that *"extension of time to appeal is a discretion of the court to grant or refuse it and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

The learned counsel for the 1<sup>st</sup> respondent furtherly submitted that, the applicant's allegations that he lacked knowledge on the existence of the suit in DHLT is not sufficient reason to warrant the court to grant him extension of time to file revision out of time because the land which was in dispute in trial tribunal is plot No. 260 BLOCK "U" (LD) KATANDALA area SUMBAWANGA township within RUKWA region, of which the owner is the 1<sup>st</sup> respondent herein and that other respondents were trespassers into the plot. He continued by outlining that it was not necessary for the applicant to have knowledge of the existence of such suit in the trial Tribunal or be

joined as a party thereto because he claims to be owner of Plot No. 677 BLOCK "U" (LD) Kristo Mfalme Area in SUMBAWANGA Municipality the plot which was not subject to the suit in question.

On the other hand, Mr. Nyato submitted that the applicant alleged illegalities in the decision of the trial Tribunal are among of the reasons prompted him to seek extension of time. He argued that the fact the applicant is condemned unheard is immaterial because there is no suit instituted against him in any court/tribunal. That the fact the advocate acted as a witness and advocate in the same case is a concocted allegation which is unworthy of no credit and the fact that; applicant and commissioner for land were not joined in the suit as a necessary party, is the allegation which has no substance considering that the issue before the trial Tribunal was who is the legal owner of Plot No. 260 BLOCK "U" (LD) KATANDALA Area, SUMBAWANGA township within RUKWA region and not whether there was double allocation into the disputed land that is why the applicant and commissioner for land were not joined as parties to the suit.

Mr. Nyato added that there is no any illegality in the trial Tribunal decision as the applicant submitted. He explained that the applicant's allegations were not sufficient to warrant this court grant him extension of



time to file revision out of time since it is not a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right be granted extension of time unless such point of law must be that of sufficient importance such as the ***question of jurisdiction***; not one that would be discovered by a long drawn argument or process as the applicant submitted.

The learned counsel for the 1<sup>st</sup> respondent concluded that, the applicant long drawn argument or process on the alleged illegality in the trial Tribunal's decision cannot be stated a good cause for this court to grant prayers sought in the applicant's application as it was held in the case of **FINCA (T) LIMITED & ANOTHER Vs. BONIFACE MWALUKISA** Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa. (Unreported), and for the above submission, the 1<sup>st</sup> respondent prays for this application be dismissed with costs for want of merit.

In their rejoinder, Mr. Sanga the learned counsel representing the applicant submitted that, the counsel for the 1<sup>st</sup> respondent in whole of his submission is all aware and not disputing the facts that, lack of knowledge of the applicant on the existence of the impugned decision subject to this



application is a sufficient ground to warrant this court to grant him extension of time, and that proof of allegation of illegality as pointed out in their submission in chief alone even in absence of any other grounds is enough to warrant extension of time as the position in the cases of **DURAM VALAMBHIA** and that of **IGENCE CHARLES & OTHERS** (Supra) cited in their submission in chief.

Mr. Sanga continued by submitting that, it is a trite law that evidence and arguments in legal proceedings must be confined to the pleadings on records and further that parties to an application is bound by its own chamber summons and affidavits [pleadings] and therefore the court cannot move beyond the records. This was the position in the cases of **VIDAYRTH vs RAN RAICHA [1957] EA 527** and the case of **PUSHPA O. RAO JIBRAI M. PATEL vs. THE FLEE TRANSPORT CO LTD (1960) EA 1025.**

In that highlight, the learned counsel argued that, it is in their strict view that, the spirit of the court in both of the afore cited decision is of the effects that parties' arguments must be confined with their pleadings and thus they stopped to depart from their own pleadings. On that basis in

case of any departure such arguments should be disregarded once and for all.

He argued that, in the case at hand it is clear in records of the trial tribunal and in the 1<sup>st</sup> respondent's total admission that, the applicant was not formed party to the proceedings, which resulted into the impugned decision hence condemned unheard and that the necessary party which in the circumstances of this case is Sumbawanga Municipal Counsel (the allocating authority) was not joined to the proceedings in the trial court contrary to the requirement of the law as it was in the case of **JUMA B. KADALA vs LAURENT MNKANDE (1983) TLR 10**, in which while dealing with the issue similar to what transpires in this case at hand the court held inter alia as follows, and he quoted;

*"In a suit for recovery of land sold to a third party, the buyer should be joined with the seller as necessary party defendant non joinder will be fatal to the proceedings....."*

The learned counsel also cited case of **NATIONAL HOUSING CORPORATION vs TANZANIA SHOE COMPANY & OTHERS'** which had a similar position, and insisted that, the court of appeal while dealing with

the issue similar to the case in hand nullified the proceedings and held that, he again quoted:

*"Since the trial commenced and continued in absence of necessary party the court preceded without authority and that constituted a major defect which went to the root of the trial thus rendering the proceedings null and void"*

Mr. Sanga added that, taking into concern the position in the above cited case they urged this court to find proper to grant this application so that to have chance to deal with the serious illegalities in the entire proceedings of the trial tribunal which are vitiated. He stressed that, this averment is supported with the sworn averment in the counter affidavit of the counsel for the 1<sup>st</sup> respondent opposing this instant application at paragraphs 3, 4, 5, 6 and 11.

However, the learned counsel continued by arguing that, the allegation that, it was not necessary for the applicant to have knowledge of the existence of the impugned decision (the trial court's decision subject to this application) and the Sumbawanga Municipal Counsel is a mere after thought and have no legs to stand in the circumstance of this case at hand on the basis that, firstly it is the Sumbawanga Municipal Counsel which



allocated both parties the land at issue thus it was a necessary party in determining ownership of the same and whom could give reliable evidence in that regard which could help to resolve the said dispute and he ought to be been joined, not joining it to the case renders the whole of the proceedings vitiated thus suffice to be the ground to warrant extension of time for revision.

Mr. Sanga added that, again it is obvious and not disputed by both the 1<sup>st</sup> respondent together with his advocate as seen at paragraph 2, 3, 4, 6, 8, 9, 10 and 11 of the counter affidavit sworn by the counsel for the 1<sup>st</sup> respondent that despite the applicant not being formed party to the proceedings in the trial tribunal, the decision and orders of the impugned decision directly affects his interest over his legally acquired plot as it ordered his house to be demolished and the plot be taken by the 1st respondent.

The learned counsel stressed that, leaving alone the fact that the applicant owns a different plot to that of the 1<sup>st</sup> respondent which was subject matter of the case in trial tribunal still as it is not disputed, the applicant's plot was subjected to the execution following an order emanated from the impugned decision despite the fact that the same was

not subject matter of the said case, and that the applicant was not afforded the chance to be heard prior to the said execution and the same if not dealt by allowing this application is likely to infringe the rights of the applicant.

Mr. Sanga did not hesitate to submit that, the counsel for the 1<sup>st</sup> respondent is not disputing the fact and position of the law that, whenever there is proof of allegation of illegalities in the impugned decision, this alone even in absence of any other ground warrant the court to grant extension as the same is supported with many case laws inter alia the case of **FINCA (T) LIMITED & ANOTHER** (Supra) cited by 1<sup>st</sup> respondent's counsel in his submission.

To that fact, Mr. Sanga argued that, there is a number of serious illegalities in the impugned decision as observed and pointed out in their submission in chief which needs the attention of this necessary parties to wit: the applicant and Sumbawanga Municipal Counsel (the applicant was condemned unheard) contrary to principle of natural justice, 2<sup>nd</sup> the counsel for the 1<sup>st</sup> respondent acted as an advocate and witness in the same case, 3<sup>rd</sup> the documents instituting a case in the trial tribunal was neither endorsed nor bearing the name of the drawer contrary to section

44 (2) of the Advocates Act, 1961 [Cap 341 R.E 2019]. Holding that there is no any illegality in the impugned decision is a pure misleading fact which deserves no attention of this court.

Concluding, Mr., Sanga submitted that, it is in their strict view and obvious fact that, the above pointed illegalities that are obvious in the face of records of the trial tribunal being of pure points of law are sufficient to warrant this court to grant the applicant with extension as prayed. It is again in their knowledge that, points of illegalities must be points of law and of sufficient important, of which in their view those what has been pointed out herein above are among them and not only the question of jurisdiction as alleged by the counsel for the 1<sup>st</sup> respondent, and therefore, basing on their well argued submission with the principle and law substantiation herein they invite this honorable court to allow this application to its entirely with cost.

In the light of the arguments raised by the learned counsels from either side above, the thrust on this Court is whether or not, the application by the applicant has merits. In dealing with this issue, my starting point is the provisions of **Section 14 (1) of the Law of**



**Limitation Act Cap 89 R.E 2002** under which this application has been preferred. In its own words, the provision stipulates thus:

*"Notwithstanding the provision of this Act, the court may, for any **reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

**[Emphasis supplied]**

The bolded words in the quoted provision above, connotes the determinant factors in granting the application for extension of time. The issue therefore is as to whether or not, the applicant has managed to demonstrate good or sufficient cause as inferred in the quoted provisions above. There are overabundance of authorities as to what is meant by good or sufficient cause. See: **Godwin Ndewesi and Karoli Ishengoma Vs Tanzania Audit Corporation [1995] TLR 200, Regional Manager, Tanroads Kagera Vs Ruaha Concrete Company Limited, Civil Application No. 96 of 2007, Phiri M. K. Mandari and Others Vs**

**Tanzania Ports Authority, Civil Application No. 84 of 2013, Joseph Paul Kyauka Njau and Another Vs Emanuel Paul Kyauka and Another, Civil Application No. 7/5 of 2017,** and the famous case of **Lyamuya Construction Company Limited Vs Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (all unreported).

In **Lyamuya Construction Company Limited's** case (supra), the Court laid down some factors which can be used to assist the Court, in assessing as to what amounts to good or sufficient cause which were as follows;

1. The applicant must account for all the period of delay;
2. The delay should not be inordinate;
3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take;
4. If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.

Basing on what has been highlighted above, this court is enjoined in this application, to consider as to whether it qualifies in terms of the captioned factors. To that fact, I read between the lines the submissions made by the side moving this court, whereby the counsel for the applicant submitted that, there was some illegalities in the impugned decision of the District Housing and Land Tribunal of Sumbawanga as the applicant owns a different plot to that of the 1<sup>st</sup> respondent which was subject matter of the case in the trial tribunal still as it is not disputed, but in its awkwardness the applicant's plot was subjected to the execution following an order emanated from the impugned decision despite the fact that the same was not subject matter of the said case, and that the applicant was not afforded the chance to be heard prior to the said execution and the same if not dealt by allowing this application is likely to infringe the rights of the applicant. The applicant in the affidavit and as well-argued by the applicant advocate that decision intended to be revised before this court is faced with illegality on the face of it. The said illegality is based on the principle of right to be heard that the applicant and the Sumbawanga Municipal Council were not accorded with a chance to be heard as a necessary party to the proceedings. The learned advocate was of the firm view that the ground of illegality per se a sufficient cause for an extension



of time and he cited to me the case of **Principal Secretary, Ministry of Defence and National Services Vs. Devram Valambhia (1999) TLR 182** to bolster his position which was adopted in the case of **The Registered Trustee of SOS CHILDRENS'S VILLAGE TANZANIA versus Igenge Charles & 9 Others (supra)**.

There are several decisions of the Court of Appeal regarding issue of illegality as raised against the challenged decision. **In Vip Engineering and Marketing Limited and Two Others Vs. Citibank Tanzania Limited**. Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported) it was held:

*"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 (now Rule 10 of the court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the rules to account for the delay"*

The issue was also considered in the case of **Tanesco vs. Mufungo Leonaard Majura and 15 Others**, Civil Application No. 2016, (unreported), where it was held:

*Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, there is a complaint of illegality in the decision intended to be impugned... suffices to move the Court to grant extension of time so that, the alleged illegality can be addressed by the court.*

Upon dispassionately giving a deep thought to these complaints, and the principle in the above authorities, without hesitating, I join hands with the submissions of the applicant's counsel, that it is a settled principle that allegation of illegality on the decision intended to be challenged is a sufficient reason for extension of time even if there is no other reason. In that line, I am convinced that the complaints of illegality on the decision intended to be challenged is a good or sufficient reason warranting this court to grant the applicant with the extension of time to file his application for review as it was highlighted in the case of **Lyamuya Construction Company Limited** (supra).

In so holding, I find merit in this application by the applicant. As a result, I grant the application with direction that, the applicant has to lodge

his application within a period of twenty one (21) days from the date of this ruling. No order as to cost is made.

It so ordered.



  
**D. E. MRANGO**

**JUDGE**

**11. 08. 2020**

Date	-	11.08.2020
Coram	-	Hon. D.E. Mrango – J.
Applicant	-	Mr. Deogratius Sanga – Adv.
1 <sup>st</sup> Respondent	-	Mr. Sanga for Mr. Erick Nyato – Adv.
2 <sup>nd</sup> Respondent	}	Absent
3 <sup>rd</sup> Respondent		
4 <sup>th</sup> Respondent		
B/C	-	Mr. A.K. Sichilima – SRMA



**COURT:** Typed Ruling delivered today the 11<sup>th</sup> day of August, 2020  
in presence of Mr. Deogratius Sanga – Learned Advocate  
for the Applicant and also hold brief for Mr. Erick Nyato –  
Learned Counsel for the 1<sup>st</sup> Respondent, and in the  
absence of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent.

Right of appeal explained.



  
**D.E. MRANGO**  
**JUDGE**  
**11.08.2020**