

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 32 OF 2019**

*(Originating from the decision of District Land and Housing tribunal for Kinondoni at Mwananyamala in Application No. 242 of 2016, Hon. R. Mbilinyi Chairperson)*

**THE REGISTERED TRUSTEES ARCHDIOCESE OF**

**DAR ES SALAAM.....APPLICANT**

**VERSUS**

**ADELMARSI KAMILI MOSHA.....RESPONDENT**

**RULING**

**Date of last Order:** 21/07/2020

**Date of Ruling:** 09/10/2020

**MLYAMBINA, J.**

The lingering issue in this application is; *whether the Applicant is entitled to be granted leave for extension to file revision out of time in respect of Application No. 242 of 2013 by Kinondoni district land and housing tribunal dated 20<sup>th</sup> May, 2016 upon which an extracted copy was ready for collection on 25<sup>th</sup> March, 2019 certified by R. Mbilinyi Chairperson.*

The application was preferred on 14<sup>th</sup> June, 2019 by way of chamber summons made under *Section 52 (2) of the Land Disputes Courts Act Cap 216 (R.E. 2002)* and *Section 14 (1) of*

*the Law of Limitation Act Cap 89* it was supported with an affidavit of his Lordship Cardinal Polycarp Pengo. To do justice on his evidence, I will hereby reproduce paragraph 1 through 13 of the supporting affidavits:

1. I am one of the Trustees of Archdioceses of Dar es Salaam dully authorized to depone this affidavit in support of the application for extension of time thus conversant with the facts I dopone hereunder.
2. A Priest at St. Monica Parish, Father Gilbert Makuru was served with a Drawn Order in the name of the Registered Trustees of Archdiocese of Dar es Salaam dated 20<sup>th</sup> May 2016 on 13<sup>th</sup> April, 2019, a copy is herewith attached and marked as annexure FMR1...
3. In the Drawn Order above mentioned under paragraph 2, the extracted copy was ready for collection on 25<sup>th</sup> March, 2019.
4. Father Gilbert Makuru being a Priest at St Monica Catholic upon which the order was served sought legal advice on the matter from Mr. Francis Mwita an Advocate.
5. Mr. Francis Mwita decided to Perusal the Court file before advising him on the way forward.

6. Mr. Francis Mwita wrote a letter to peruse the Court file and came across a Deed of Settlement which is the subject of the Drawn Order. Copies of the letter for perusal and Deed of Settlement are herewith and marked as (annexure FMR2) Collectively.
7. Upon reading over the Deed of Settlement and the advice he received from Mr. Father Gilbert Makuru Francis Mwita, noted fraudulent acts on the Deed of Settlement and hence resolved to inform the Applicant herein.
8. That, the facts of fraudulent act noted are as follows:
  - i. The parties in the *Application No. 242 of 2013* are not the parties referred on the Deed of Settlement.
  - ii. The said Deed of Settlement on the part of Respondent was signed by a person who was not a member of the Trustee of Archdioceses of Dar es Salaam and hence no power to do so.
  - iii. That, the said Deed of Settlement was attested and witnessed by an Advocate who had no instruction from the Applicant herein.
  - iv. That, the said Advocate happened to witness both parties in the absence of their Advocates.

9. The said Drawn Order was unilateral and biased for it was advantageous to the Respondent *per se*.
10. Applicant was not aware of that suit until when he was informed by father Gilbert Makuru of the Drawn Order that was served to him on 13<sup>th</sup> April, 2019.
11. We have been advised as trustees of Archdioceses of Dar es Salaam by Advocate Francis Mwita that the time to file revision had expired thus, we seek for leave to file revision out of time.
12. That the delay in filing revision has not been deliberate but was due to the Courts process upon which an extract of the Drawn Order was ready for collection on 25<sup>th</sup> March, 2019s being 3 years since the deed of settlement was recorded in 2016.
13. That the Respondent has filed application in respect to the Drawn Order to reinforce it which is coming for mention on 11<sup>th</sup> of July, 2019.

The application was resisted by the Respondent through his counter affidavit sworn on 17<sup>th</sup> July, 2019. It was the testimony of the Respondent that there is no fraudulent in signing the Deed of Settlement and the parties are the same in the Land

Amandus Chitumbi to act for the Archdiocese of Dar es Salaam without the Trustees' consent.

Hence, in view of the Applicant, the Drawn Order was the outcome of the alleged illegality in the Deed of Settlement based on fraudulent acts as averred under paragraphs 7, 8 (1), (11), (111), (iv) and 9 in the affidavit. It was the Applicants submission that the mere allegation of illegality based on fraudulent act by the Respondent constitutes sufficient ground for this Court to extend of time so that the allegations set forth are settled. The Applicant cited the case of *Transport Equipment Ltd v. D.P. Vatambia* (1993) T.L.R. No. 91 in which it was held:

- i. N/A.
- ii. *When the point at issue is one alleging illegality of the decision being challenged the Court has a duty even if it means extending the time for the purpose of ascertaining the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right. (Emphasis applied).*

The Applicant amplified paragraph 2, 3, and 12 of the supporting affidavit by submitting that the Drawn Order herein challenged

was made on 20<sup>th</sup> May, 2016 and its extracted copy was made ready for collection on 25<sup>th</sup> March, 2019. It was the Applicant's submission that it took 3 years to have the typed decision ready for collection. This was an automatic delay not occasioned by the Applicant because at the time the extracted copy was available for collection on 25/03/2019, 60 days statutory period to file revision had long expired.

Further, the delay was not out of the Applicant's negligence. Instead it was an administrative delay. Hence, not real delay by the Applicant rather than a technical delay which is a sufficient ground to grant extension. The Applicant cited the case of **Fourtunatus Masha v. William Shija and Another** [1997] TLR No. 154 as an Authority in which it was held:

*A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original was lodged in time but had been found to be competent for one or another reason and a fresh appeal had to be instituted. In the present case the Applicant has acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances,*

*an extension of time ought to be granted. (Emphasis added).*

It was the Applicant's submission that the grant of this application would not prejudice or be an injustice upon the Respondent in any manner. To the contrary, the denial would be to the detriment of the Applicant as he will have been denied access to justice and exercise his right of being heard in the Court of justice.

In reply submission, the Respondent asserted that the Applicant is challenging the legality of the Deed of Settlement between the parties herein which was entered and recorded by the Tribunal. The Law under *Regulation 18 (1) of the Land Disputes Courts* (The District Land and Housing Tribunal), 2003 empowered the Chairman of the Tribunal to enter Consent Judgement where the parties agreed to settle the matter before the Tribunal. This regulation states as follow:

*18 (1) where the parties at any stage of the proceedings have agreed to settle the matter before the Tribunal the Chairman may enter Consent Judgement or order upon such terms as may be agreed by parties.*

The Respondent therefore prayed this Court be pleased to struck out the application by the Applicant with cost. The Respondent advanced two points more: **One**, the counsel for the Applicant did not adduce nay element of fraud in the Consent Judgement of which could amounted to illegality for this Court to extend time on the ground of illegality as alleged by the counsel for the Respondent. **Two**, a party who seeks for extension of time must account each and every day of delay as in the case of **Yazid Kassim Mbakileki v. CRDB (1996) LTD Bukoba Branch and Another**, Civil Application No. 412/04/ of 2018 Court of Appeal of Tanzania at Bukoba, [unreported] at pages 13 and 14 the Court of Appeal of Tanzania has these to say:

*It must be insisted that this Court has consistently emphasized on the requirement for the Applicants for extension of time to account for every day of delay...indeed, in Sebastian Ndaula (supra) the Court went further and stated that the need to account for every day of delay becomes more important especially in a matter which has taken longtime it was decided.*



*A copy of the ruling is hereby annexed as annexure Mocha 1 and leave of the Court is hereby craved for it to form part of the submission.*

The Respondent distinguished the case of **Fortunatus Masha** (*supra*) because that case involved technical delay as the appellant already filed an appeal and was struck out while the instant application the Applicant never filed any Application since 20<sup>th</sup> May, 2016 when the Court entered Consent Judgement and they failed to account each day of delay which made the Applicant to file this application after expiration of 3 years.

On the illegality in the Deed of Settlement based on fraudulent acts as averred under paragraphs 7, 8 (i), (ii), (iii), (iv), and 9 of the affidavit of the Applicant, the Respondent insisted that Applicant neither disclosed fraud nor illegality as for this Court to grant an extension of time to file for the revision as is not the duty of the Court to find illegality raised by the Applicant herein.

I will start with the alleged fraud and illegality on the Consent Judgement of the trial Tribunal. It suffices to observe at this point that the Applicant has a duty to bring into picture the likelihood of fraud and illegality. If there is such picture, it suffices for the

Court to grant the extension to pave way for the Applicant to prove the alleged fraud and illegality.

Though disputed, the Applicant has specified the existence of frauds to include different names. I have noted three fraud and illegalities:

**One**, the names are different. In the consent Judgement, the Respondent is the Registered Trustees Archdiocese of Dar es Slaam, Kilungule St Monica Parish. The Applicant here is the Registered Trustees Archdiocese of Dar es Salaam. These are two different names. I'm even doubtful on the legal existence of the Respondent before the trial Tribunal. However, it will need some material to be proved during Revision Proceedings. It suffices here to observe that the two are different names.

**Two**, the Applicant has also asserted that the Deed of Settlement was signed by the person who is not the member of the Registered Trustees Archdiocese of Dar es salaam. The Respondent had general denial. I therefore take that point to be an illegality which should be established in revision proceedings.

**Three**, there is a point that the Deed of Settlement was attested by an Advocate who had no instruction from the Applicant. In the view of this Court, lack of proper instruction vitiates the whole

proceedings. The Respondent to the contrary merely disputed such evidence without giving strong evidence to counter the evidence of the Applicant.

Having considered the supporting affidavit and the opposing affidavit along with the submissions of both parties. I'm of observation that the Applicant has laid down sufficient cause warranting grant of this application. In the case of **Regional Manager Tanroads Kigera v. Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2007 Court of Appeal of Tanzania at Dar es Salaam (unreported) held:

*What constitutes sufficient reason cannot be laid by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the Applicant must place before the Court material which will move the Court to extended the time limited by rules.*

I'm further aware that the Applicant has a duty to account for each day of delay and to avail the Court with reasons for not acting negligently in pursuing her rights. In the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian**


**Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), at page 6-7 the Court had this to say:

*It is in the discretion of the Court to grant extension of time, but that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated;*

- a) The Applicant must account for all the period of delay*
- b) The delay should not be inordinate.*
- c) The Applicant must show diligence, and not a path, negligence or sloppiness in the prosecution of the action that he intends to take, if the Court feels that there are another sufficient reasons...*



In the instant case, the Consent Judgement was recorded in 2016. There are no good reasons as to why the Drawn Order which actually was supposed to be a decree was extracted in 2019. The said order was served to the Applicant on 13<sup>th</sup> April, 2019. As such, the Applicant cannot be blamed to account for the three years delay which was largely contributed by the trial Tribunal itself.

In the upshot, the application is granted on merits. Costs shall follow events. The Applicant is given 21 days from the date of being issued with the typed copy of this ruling to file her revision. It is so ordered.



**Y. J. MLYAMBINA**  
**JUDGE**  
**09/10/2020**

Ruling delivered and dated 9<sup>th</sup> October, 2020 in the presence of Counsel Mangiteli Marwa holding brief of Francis Mwita for the Applicant and in the absence of the Respondent.



**Y. J. MLYAMBINA**  
**JUDGE**  
**09/10/2020**