

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS CIVIL APPLICATION NO 51 OF 2020

BETWEEN

- 1. NYABICHUNE VILLAGE COUNCIL _____ 1st APPLICANT**
2. DISTRICT EXECUTIVE DIRECTOR- TARIME DISTRICT COUNCIL _____ 2nd APPLICANT

VERSUS

- 1. MARWA MANG'ERA KESONGO _____ 1st RESPONDENT**
2. NYANGOTO VILLAGE COUNCIL _____ 2nd RESPONDENT

(Arising from the Decision and Orders from District Land and Housing Tribunal for Tarime at Tarime, Hon. Ngukulike, Chairman in Land Application no 56 of 2018 dated 17.10.2019)

RULING

4th & 27th November 2020

GALEBA, J.

In this application, two facts are not disputed **one** is that on 24.06.2013 **NYANGOTO VILLAGE** authorities threatened **MARWA MANG'ERA KESONGO** that he would be evicted and his house demolished in order to pave way for construction of VETA training institute in the village. **Two**, that on 22.08.2014, Government Notice no 301 of 2014 was enacted with the effect of severing or separating **NYABICHUNE VILLAGE** from what had been the territory of **NYANGOTO VILLAGE COUNCIL**. From the date of the enactment of GN 301 of 2014 the land upon which VETA was to be established fell within

NYABICHUNE VILLAGE territorial boundaries and not any more within **NYANGOTO VILLAGE COUNCIL** jurisdiction, so to speak.

In the year 2015 after **NYABICHUNE VILLAGE** had been formed, **MARWA MANG'ERA KESONGO** decided to take up **NYANGOTO VILLAGE's** threats of 2013 by suing that village (**NYANGOTO VILLAGE COUNCIL**) in the DLHT at Tarime. He instituted land application no 39 of 2015 against **NYANGOTO VILLAGE COUNCIL** moving the **DLHT** to declare him the lawful owner of the land, which orders were granted. In this case therefore, although the case had been commenced, heard and decided against **NYANGOTO VILLAGE COUNCIL**, but the land subject of the litigation was never in **NYANGOTO's** territorial boundaries at that time in 2015.

In 2018, **NYABICHUNE VILLAGE COUNCIL** filed land application no 56 of 2018 against **MARWA MANG'ERA KESONGO** moving the tribunal to declare the village as the lawful owner of the land which had previously been a subject of litigation before the same DLHT but against a village council to which the land does not belong. The respondent (**MARWA MANG'ERA KESONGO**) raised the defense of *res judicata*, and the DLHT decided that indeed the matter was *res judicata* and dismissed it

with costs. **NYABICHUNE VILLAGE COUNCIL** was aggrieved by this this decision but did not manage to appeal in time so it had to file this application for enlargement of time in order to appeal.

When this application came up for hearing, on 04.11.2020, the applicants were being represented by Mr. Maganiko Msabi, town solicitor and the respondent was appearing by his son Mr. Benson Mang'era. In supporting the application Mr. Msabi submitted that Nyangoto village authorities ceased to have mandate over the land in dispute on 22.08.2014 when GN 301 of 2014 was passed and therefore any matter filed over the land after that date Nyabichune ought to have been made a party. He submitted that Nyabichune's right to be heard was violated and that land application no 56 of 2018 was not *res judicata*, because they were not parties in the former matter, that is land application no 39 of 2015. In reply Mr. Benson Mang'era was frank that he was not sure as to when Nyabichune village came into existence. He however he stated that the land in dispute is now in Nyabichune village.

In this application if **NYABICHUNE VILLAGE** came into existence on 22.08.2014, and in 2015 **MARWA MANG'ERA KESONGO** filed land application no 39 of 2015 against **NYANGOTO VILLAGE COUNCIL** which

had no control over the land, surely there was an illegality. That is so, ***first***, because there is a decree against **NYANGOTO VILLAGE** over the land which is located in **NYABICHUNE VILLAGE**. ***Secondly***, holding that land application no 56 of 2018, was ***res judicata*** land application no 39 of 2015 needs to be investigated as to its legality because there does not seem to be any clear evidence that **NYABICHUNE VILLAGE** was a party in land application no 39 of 2015. These two issues are illegalities and where there is an illegality, the applicant for extension of time, does not even have to detail any reasons for the delay see **VIP Engineering and Marketing Ltd and others v Citibank Tanzania Ltd**, Consolidated Civil References No 6, 7 and 8 of 2006 (unreported).

Based on the above reasons, this court makes the following orders;

1. The 1st applicant which was a party to the proceedings in land application no 56 of 2018 is permitted to appeal against the orders of the District Land and Housing Tribunal for Tarime to challenge its decision in that matter.
2. The appeal may be filed in twenty one (21) days from the date of this order.

3. This application succeeds to that extent with no orders to costs.

DATED at MUSOMA this 27th November 2020



Z. N. Galeba
JUDGE
27.11.2020