IN THE HIGH COURT OF TANZANIA

(MWANZA DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPLICATION NO. 40 OF 2020

ROBERT SENGEREMA MAZIBA.....APPLICANT

VERSUS

1. LUMUMBA MTELA @ MTERA
2. BAHATI MANYASI } **.....RESPONDENTS**

Exparte ruling

08/10 & 06/11/2020

RUMANYIKA, J

Under a certificate of urgency dated 27/4/2020, the application for extension of time with respect to judgment and decree dated 24/7/2013 of the District Land and Housing Tribunal, Mwanza (the DLHT) to appeal it is brought under Section 14 (1) of the Law of Limitation Act Cap 89 RE. 2019. It is supported by affidavit of Robert Sengerema Mazila, whose contents essentially Mr. Masoud Mwanaupanga learned counsel for Robert Sengerema Mazila (the applicant) adopted during the hearing. It would bring no harm also from the outset to state that all is traced back from the decision of Kirumba Ward tribunal dated 30/10/2020.

When the application was called on 8/10/2020, though duly served neither Lumumba Mtela @ Mtera or Bahati Manyasi (the 1st and 3rd

respondents) respectively appeared pursuant to my reasons and order of 8/10/2020 I dispensed with their appearance hence the expate ruling.

In a nutshell Mr. Masoud Mwanaupanga leaned counsel submitted that now that there was on record no contradicted evidence that the 1st respondent had bonafide sold the disputed land to the applicant before, therefore the latter had interest but he was not joined to the proceedings, the latter was not fairly heard leave alone a hearing. That the omission amounted to illegality hence nullity proceedings (case of **Mohamed Said Seilf V. Abdul Aziz Hagab & Another**, Civil Application No. 10 of 2010) sufficed the point of illegality to dispose of the application (cases of **Ngao Godwin Losero V. Julius Mwarabu,** Civil Application No. 10 of 2015 (CA) and **Mohamed Salum Nahdi V. Elizabeth Jeremiah**, Civil Reference No. 14/2017 (CA) unreported.

The issue is in fact not only whether the applicant has assigned good cause and sufficient grounds for extension of time but also whether the application is tenable under the circumstances. The answer is no.

At least it is an undeniable fact that the application was lodged say a decade later more so the fact that the applicant he was aware of the dispute therefore reasonably aware of the impugned decision on 19/10/2010 (paragraphs 6,8, 9 and 10 of the supporting affidavit) referred. The 1st respondent may have concealed the above stated crucial fact yes, but the DLHT was not to blame. Whereas I would agree with Mr. Masoud Mwanaupanga learned counsel that once right to be heard was breached, alone the breach constituted a sufficient ground for extension of time, the principal only applies where the subject was in court but ignored

or in that regard his application for a 3rd party notice was simply ignored as the case may be. It means therefore that even when the instant application was end of the granted, the DLHT could not be faulted on something it should not have even imagined of leave alone being aware of.

If the need persisted, the applicant may wish to sue the 1st and 2nd respondents as the necessary and proper party respectively he is so advised and directed. The application is dismissed with costs. It is so ordered.

Right of appeal is explained.

S. M. RUMANYIKA

JUDGE

31/10/2020

The ruling delivered under my hand and seal of the court in chambers this 06/11/2020 in the presence of the 2nd respondent only.

F. H. MAHIMBALI

DEPUTY REGISTRAR

06/11/2020