

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TANGA

MISC. LAND CASE APPLICATION NO. 3 OF 2020

(From the Decision of the District Land and Housing for Korogwe
in Land Application No. 28 of 2017 and Application
for Execution No. 147 of 2019)

SANARE LEMOMO APPLICANT

VERSUS

SHUKU SWALEHE RESPONDENT

RULING

MKASIMONGWA, J.

The Applicant is aggrieved by the decision of Korogwe District Land and Housing Tribunal in Land Application No. 28 of 2017 and Application for Execution No. 147 of 2019. As such he intends to apply for Revision against them. As he is caught by the time limitation, the Applicant has come to this court with this Application for extension of time in which to file an Application for Revision. In the chamber summons filed, the Applicant states as follows in seeking the order extending the time.

"That this Honourable Court be pleased to grant an extension of time to Applicant to file an Application for Revision out of time against the Judgment and Decree of the Application No. 28 of 2017 and Application for

execution No. 147 of 2019 all of the District Land and Housing Tribunal for Korogwe.”

The Application is brought in terms of Section 14(1) of the Law of Limitation Act [Cap 89 R.E 200] and it is supported by the Affidavit sworn by **Sanare Lemomo** (Applicant). The Respondent one **Shuku Swalehe** contested to the Application and in that regard, he filed a Counter Affidavit.

On the date the matter came for hearing, Mr. Mohamed Kajembe (Adv) appeared before the Court on behalf of the Applicant whereas the Respondent appeared in person. In his submission for the Application, Mr. Kajembe adopted all what is averred in the Affidavit filed in support of the Application. He added that on 15/05/2019 the District Land and Housing Tribunal for Korogwe delivered a judgment in Land Application No. 28 of 2017 by which the Applicant was declared the lawful owner of the land in dispute against the Respondent. Later on 22/11/2019, the Applicant was served with the copy of an Application for Execution of the Decree in Land Application No. 28 of 2017. The Execution Application which was registered as No. 147 of 2019 was accompanied by a copy of judgment delivered on 15/05/2019 by the Tribunal in Land Application No. 28 of 2017 which declared the Respondent the rightful owner of the land in dispute. The Application for execution was served to the Applicant on 22/11/2019 when already time in which to apply for Revision of the later (second) decision in Land Application No. 28 of 2017 had expired hence this Application. He prays the Court that the same be granted so that he may apply for

revision in which case the Court shall have an opportunity of satisfying itself of the correctness of the Proceedings and Judgment passed by the District Land and Housing Tribunal.

On the other hand the Respondent submitted objecting to this Application for extension of time. He said that since when the matter was determined he kept on developing the land in dispute and that he did so without being complained of by the Applicant or even any member of the public at large. As the matter was dealt with by the Government, the Applicant could not have remained silent when he (Respondent) developed the land if indeed the (Applicant) was declared the lawful owner of the suit land, as he alleges. He requested the Court that it dismisses this Application.

The counsel for the Applicant had nothing to submit in rejoinder and that marked the end of the submissions. I have considered the submissions and going by them and the Affidavits filed, it is clear that the parties in this matter were again parties to Land Application No. 28 of 2017 Korogwe District Land and Housing Tribunal. It is not disputed again that the Application was determined later on 15/05/2019. In a judgment (Annexure A – 1 to the Affidavit in support of the Application) dated on 15/05/2019 which was certified by the Tribunal Chairman on 09/07/2019 as being the true copy of the original, the Tribunal declared the suit land to be the lawful property of the Applicant that is Sanare Lemomo. A decree to that effect was drawn and signed by the Trial Chairman of the Tribunal. Similarly under Paragraph 2 of the Counter Affidavit, the Deponent attached a copy of Decree

(Annexure SH1). He also under Paragraph 4 attached the Tribunal's *suo motu* Proceedings (Annexure SH2). Part of Annexure SH2 (Proceedings dated 19/08/2019) reads as follows:

"Upon perusing the case file after having received the oral complaints from the Respondent that the Judgment of this matter has several errors as he won the case as this honourable Tribunal but, the "typed" judgment reveals that he loses the case. Then this honourable Tribunal perused and discovered the said errors, and in suo motto this honourable Tribunal correct the said errors and it should noted and understood that ..."

According to record from the correction Annexure SH1 was then extracted from the decision. In clear terms Annexure SH1 declares the Respondent the lawful owner of the suit property.

In Paragraphs 7 and 8 of the Affidavit filed in support of the Application the Deponent avers that in the case in question there are two conflicting judgments all dated 15th May, 2019. The Applicant is aggrieved by the second Judgment (that which declares the Respondent as the lawful owner of the disputed land and he intends to apply for Revision before this Court on account of illegality. In the circumstances it is my view the Court through the intended Revision Application shall have to consider whether or not the decision contested was legal or not. This reminds me of the duty of the Court where legality of the challenged decision is alleged. That duty was well explained by the Court of Appeal in the case of

the **Principle Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR 182 that:

"In our view when a point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right"

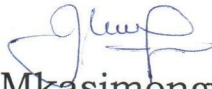
This same view had the Court in the case of **VIP Engineering and Marketing Limited and Three Others V. Citibank Tanzania Limited**: Consolidated Reference No. 6, 7 and 8 of 2006 CA (Unreported) where the Court of Appeal of Tanzania clearly stated that:

"It is therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 regardless of whether or not a reasonable explanation has been given by the Applicant under the rule to account for the delay"

In the case at hand, it is my considered opinion that the alleged illegality is apparent on the face of the record and without going into the details of the illegality, I am satisfied that the alleged illegality suffices for grant of an order extending time.

For the foregoing reason, I find the Applicant is entitled for extension of time. Accordingly, This Application is granted. The Applicant shall file the Application for Revision within the period of limitation provided for by the law from today.

Dated at Tanga this 19th of October, 2020.



E. J. Mkasimongwa

JUDGE

19/10/2020

Date: 19/10/2020

Corum: Mkasimongwa, J

For the Applicant: Mr. Mpandangongo (Adv)

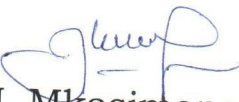
For the Respondent: Present in person

C/C: Mr. Kamwaya

Court: Ruling delivered in Chambers this 19th day of October, 2020 in the presence of Mr. Mpandangongo (Adv) for the Applicant and of the Respondent in person.

Right of Appeal is explained.




E. J. Mkasimongwa

JUDGE

19/10/2020