



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

MISCELLANEOUS LAND APPLICATION NO. 14 OF 2018

(Arising from land application No. 20/2015 and appeal No. 100/2013 of the District Land and Housing Tribunal of Bukoba)

FESTO PHILIPO.....APPLICANT

VERSUS

RAURENT SELESTIN.....RESPONDENT

RULING

Date of last order 18/05/2020

Date of ruling 22/05/2020

N.N. Kilekamajenga, J.

The applicant appeared before this Honourable Court seeking an order for extension of time to file an application for revision against the decision of the District Land and Housing Tribunal for Kagera in land appeal No. 100 of 2013. The application was made under **Rule 3(4) of the Magistrates' Courts (Limitation of Proceedings under Customary Law) Rules, GN No. 311 of 1964** and **section 43(1)(b) of the Land Disputes Courts Act, Cap. 216 RE 2002**. The application was supported by the affidavit deposed by the applicant. On the other hand, the respondent filed the counter affidavit resisting the application.

When the application was called for hearing, the applicant appeared under the representation of the learned advocate, Mr. Bitakwate while the respondent appeared in person under the representation of the learned advocate, Mr. Bengesi. When invited for oral submission, the counsel for the applicant informed the Court that the application originated from Land Appeal No. 100 of 2013 of the District Land and Housing Tribunal of Bukoba. The matter also emanated from Misc. Land Application No. 20 of 2015. The counsel for the applicant submitted further that when the Land Appeal No. 100 of 2013 was scheduled for hearing, the applicant was absent because he was sick. So, the case was heard ex-parte. The decision of the District Land and Housing Tribunal was delivered which further directed the respondent to redeem the land. That means, the respondent was supposed to pay the applicant an amount of money before the land could be redeemed. Before the respondent redeemed the land, he filed another application before the same District Land and Housing Tribunal claiming the handing-over of the disputed land. The tribunal ordered the applicant to vacate the suit land and hand-over the land to the respondent before payment of the redemption price.

Mr. Bitakwate referred the Court to the case of **Josephina Kalatu v. Isaac Michael Mallya, Civil Reference No. 1 of 2010, CAT at Mwanza at pages 11 – 12** where illegality was considered to be sufficient cause for extension of

time. He further informed the Court that there are three illegalities in the instant case: **first**, the ward Tribunal which heard the matter had no jurisdiction to hear and determine the land valued at Tshs. 4,000,000/=. **Second**, the matter in the Ward tribunal was filed out of time. The land was purchased in 2007 and the respondent claimed the land in 2012. Under Haya customary law, the land must be redeemed within 3 months from the date when it was sold. He cemented the argument with the case of **Leonace Mtalindwa v. Mariadina Edward [1986] TLR 120**. **Third**, the last order of the District Land and Housing Tribunal of Bukoba which ordered the applicant to vacate the land without payment of compensation was contrary to the law. He finally urged the Court to allow the application and costs will follow in the due course.

In response, the counsel for the respondent argued that according to the 3rd paragraph of the applicant's affidavit, the applicant felt sick from 10/03/2014 to April 2015. However, in January and February 2015, the applicant filed the criminal case No. 02 of 2015 before Muleba District Court against the respondent. On the first illegality pointed out by the counsel for the applicant, Mr. Bengesi argued that when the matter was heard by the Ward tribunal, there was no evidence tendered to show the value of the land. The sale contract was tendered in the District Land and Housing Tribunal and not in the Ward tribunal. On the second illegality on time limitation, the case submitted by the learned

counsel for the applicant has been overruled by the recent legal authorities. On the third point, Mr. Bengesi argued that the applicant did not show-up for payment of the redemption price. Therefore, the applicant never obeyed the orders of the Court. He finally urged the Court to dismiss the application.

When rejoining, the counsel for the applicant argued that it is not true that the applicant was admitted in hospital. The applicant was sick though was not admitted in hospital. On the criminal case No. 02 of 2015, Mr. Bitakwate argued that this allegation has no proof. On the pecuniary jurisdiction of the Ward Tribunal, the amount of Tshs. 4,000,000/= appeared on pages 4 and 6 of the proceedings. On the issue of limitation period, Mr. Bitakwate submitted that the law has not changed. The learned counsel for the respondent might have misdirected himself. The time to redeem the customary law remains at three months after the sale of the land. He finally prayed to allow the application so that the applicant may file the application for revision.

The major issue to be determined in this application is whether the application has merit. Before the Court can grant extension of time, there must be sufficient cause advanced by the applicant. However, extension of time is the discretion of the court which must be exercised judiciously. In the instant case, the counsel for the applicant has advanced three illegalities to move the Court to extend

time. The counsel argued that the Ward Tribunal had no jurisdiction to entertain the matter because it was beyond the tribunal's pecuniary jurisdiction. He also argued that the order to vacate the disputed land was illegal. Also, that the matter was already time-barred when filed in the Ward Tribunal. In my view, the reasons advanced by the applicant have merit. I have perused the court file and found out that the amount of Tshs. 4,000,000/ featured in the proceedings but the Ward Tribunal did not realize that the amount of money was above the pecuniary jurisdiction conferred under the law. For that reason alone, the Ward Tribunal was not supposed to determine the case. This is an illegality enough to warrant the Court to exercise its discretion to enlarge time to file the application for revision.

On the second point, I have also perused the records of the court and discovered that the order of the District Land and Housing Tribunal contradicted the previous decision of the same tribunal which ordered the respondent to redeem the clan land. In my view, the applicant was supposed to compensate the applicant before he could vacate the land. It was illegal for the Tribunal to order vacant possession of the disputed land before the applicant was compensated. In my view, this illegality must be corrected by the Court. The records of the court may be corrected if the instant application is allowed. For that reason therefore, these two illegalities are enough to allow the application.

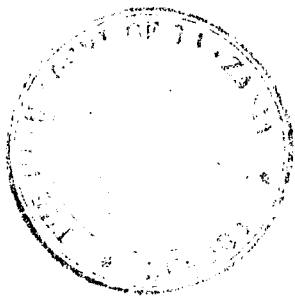
Based on the above reasons and the illegalities pointed above, the application is allowed; costs the application to follow in the due course. Order accordingly.

Dated at Bukoba this 22nd May 2020.


Ntemi N. Kilekamajenga
JUDGE
22nd May 2020

Court:

Ruling is delivered in the presence of the learned counsel for the respondent, Mr. Eliphasi Bengesi and the applicant present in person.




Ntemi N. Kilekamajenga
JUDGE
22nd May 2020