

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
MISC. LAND APPLICATION NO. 42 OF 2019**

**1. NATIONAL MICROFINANCE BANK (PLC)
2. DOLPHIN GENERAL BUSSINESS
ENTERPRISES CO.LTD** }**APPLICANTS**

VERSUS

**1. EMMANUEL KASALA EVARIST
2. ABEL JILALA SENI
3. JUMA HEMED KINGUZA** }**RESPONDENTS**

(Application from the decision of Kahama District Land and Housing
Tribunal)

(Paulos LS Lekamoi,Chairman)

dated the 22nd day of February,2019

in

Misc. Land Application No.160 of 2018

RULING

19th November, 2020 & 05th February, 2021

MDEMU, J.:

The Applicants filed this application under the provisions of Section 41 of the Land Disputes Courts Act, Cap. 216 as amended by the Written Laws (Miscellaneous Amendment) Act, No.2 of 2016 praying for the following orders;

*(a) That, this Honourable Court be pleased to
grant an extension of time for filling a*

*Revision out of time against the execution
order of misc. Land execution Application
No.160 of 2018.*

*(b) Any other reliefs this Honourable Court
may deem just and fit to grant.*

The application is supported by an affidavit sworn by one Pastory Biyengo, an Advocate of the Applicants on 29th day of October, 2019. This Application was heard on 19th November, 2020, whereby the Applicants were represented by Mr. Mackanjero Ishengoma and the Respondents, save for the 3rd Respondent who was absent, appeared in person. Mr. Mackanjero Ishengoma, prayed to proceed ex parte after the 3rd Respondent defaulted appearance.

Mr. Mackanjero Ishengoma, first prayed the Applicant's Affidavit be adopted to form part of his submissions. He then submitted that, application for revision was not within time for want of drawn order in Application No.160 of 2018. He added that, the impugned decision was decided on 08th day of February, 2019 and they were instructed on October, 2019 to deal with the matter. It is after such instructions, they went all through the decisions and the ruling in execution and learnt to be tainted with illegalities committed by the District Land and Housing

Tribunal of Kahama. In his view, where there is illegalities, the court has discretion power to extend time so as to rectify them. He concluded by citing the case of **Amour Habib Salim v. Hussein Bafagi, Civil Application No.52 of 2009** (unreported) to support his point.

In reply, the 1st Respondent opposed the application. He submitted that, the Applicants did not attend in the District Land and Housing Tribunal four times. Therefore, they had ample time to have this revision, but they delayed. To him, this is misuse of court processes and thus prayed the application be dismissed for want of sufficient cause.

The 2nd Respondent on his part, had nothing to say other than insisting to court to dismiss the application because the Applicants had ample time for revision but never utilized that time.

In rejoinder, Mr. Mackanjero Ishengoma, Learned Advocate for the Applicants reiterated his previous position that, there are sufficient cause for extending time for revision so that to rectify the errors committed by the District Land and Housing Tribunal in execution.

Having carefully gone through submissions of the parties and affidavits as well, the issue to determine here is whether the Applicants have shown good and sufficient cause for the delay to allow this court to extend time for revision. Section 41 (1) of the Land Disputes Courts Act

confers this court with jurisdiction to hear appeals or revisions from the District Land and Housing Tribunal, the section reads as follows;

" Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceedings from or in respect of any proceedings in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court."

As to time limitation to file revisions, the provisions of Section 41 (2) of the Land Disputes Courts Act is silent. It only talks for time to file an appeal but not revision. For clarity, the said Section is reproduced as hereunder;

"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order provided that, the High Court may for the good cause, extend the time for filing an appeal either before or after the

expiration of such period of forty five days."

As it is, the application at hand is on extension of time to file revision. I am of the view that, the provisions of Section 14 of the law of Limitation Act Cap.89 should also have been included because Section 41(2) of Cap.216 as quoted above, is silent on the issue of time to file revision. In essence, Section 14 of the law of Limitation Act, Cap.89, confers this court with discretionary powers to extend time to any other application rather than appeal where there is a sufficient and good cause to do so. The section reads as follows;

14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry

*of the period of limitation prescribed for
such appeal or application."*

On that note, as the section is silent regarding time limit to file an application for revision, Paragraph 21 of the schedule to the Law of Limitation Act is what prescribes time limit for revision. It is stated in that paragraph that;

*21. Application under the Civil
Procedure Code, the Magistrates' Courts
Act or **other written law for which
no period of limitation is provided
in this Act or any other written law
..... sixty days ."**
(emphasis mine)*

According to the provisions just cited above, it is clear that, time for revision where no period of limitation is provided in the Act or any other law is sixty days. It is to say, in this instant application, the Applicants ought to have lodged the application for revision within sixty days. Was there any justification for not filing that application in time? Paragraph 6 of the Applicant's affidavit states as follows regarding grounds for extending time;

6. That, after the delivery of the review order, we forwarded the said order to the head office of the Applicant at Dar es salaam waiting the reply for ahead for the same. Therefore having the existence of the said applications for stay No.69 of 2019, and application for review No.153 of 2019, and waiting the reply for ahead from the head office of the Applicant at Dar es salaam of which they replied too late, contributed for the Applicant's delay to file an application for revision to this Honourable court, so the Applicant's delay to file application for revision was beyond their control since any case has to be forwarded to the heard office for the same to be assigned to the appropriate advocate hence the delay to be issued with the copy of judgement was the cause of delay.'

According to the ground as quoted above that delay was beyond their control due to correspondencies to and from the head office for the same to be


assigned to the appropriate Advocate, in my view, this is not a sufficient cause. The law is clear that, in order for the court to extend time to appeal or any other application like revision and or review, the Applicant must show good and sufficient cause for delay. This legal requirement has been re-stated in a number of court decisions. See the case of **Salum Nhumbili V. Republic, Criminal Application No. 8 of 2014; William Ndingu @ Ngoso V. Republic, Criminal Appeal No. 3 of 2014** and **Dismas Bunyerere V Republic, Criminal Application No. 42/2017** (all unreported) where it was held that, for the court to exercise its discretion to extend time to appeal, the Applicant must satisfy that there are sufficient and good cause for the delay.

In the instant application, the records shows that, the decision of the District Land and Housing Tribunal was entered on 27th day of July, 2018 in Land Appeal No. 39 of 2018. The execution order was on 21st day of December, 2018. Furthermore, an order in application No. 153 of 2019 for review also was on 29th day of April, 2019. This application got filed on 29/10/2019. In terms of the provisions of section 14 of the Law of Limitation Act, time for revision to this court is prescribed to be sixty days. Therefore, the Applicants delayed for almost 6 months. This means that, the Applicants acted negligently. They have failed to account for those days of the delay. It is may not be certain that in the six months the Applicants were following up respond and instructions from head office. I therefore find no merit in this ground and is accordingly dismissed.

On the ground of illegality, Mr. Ishengoma, also submitted that, there were illegality in the decisions of the District Land and Housing Tribunal of Kahama that, in the main suit, it was decided that the 2nd Respondent to pay the purchase money to the 1st Respondent who was the Applicant in the main suit. In execution application No.160 of 2018, the chairman ordered the 1st Applicant to pay the 1st Respondent. In his view, which I concur, Mr. Ishengoma observed illegality to constitute sufficient reasons for extending time. See also the case of **Amour Habib Salim v. Hussein Bafagi, Civil Application No.52 of 2009**(unreported).

Having observed so, I allow this application for extending time for revision to the extent of the illegality as stated above. Time to file revision is extended for sixty (60) days from the date of delivery of this ruling. I do not make an order as to costs.

It is so ordered.


Gerson J. Mdemu
JUDGE
05/02/2021

DATED at SHINYANGA this 05th day of February, 2021.




Gerson J. Mdemu
JUDGE
05/02/2021