

**THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 559 OF 2020**

(Originating from Civil Revision No. 19 of 2019 before Ilala District Court)

**LUGANO ALFRED MWAKASANGULA .....APPLICANT**  
**VERSUS**  
**STEPHANIA ROELEME RAMI.....1<sup>ST</sup> RESPONDENT**  
**FORTUNATA METHOD.....2<sup>ND</sup> RESPONDENT**  
**KISHE AUCTION MART .....3<sup>RD</sup> RESPONDENT**

**RULING**

Date of Last Order 31/5/2021

Date of Ruling: 11/6/2021

**MASABO, J.;**

Aggrieved by the decision of the District Court of Ilala in Civil Revision No. 19 of 2019, the applicant has moved this court by way of chamber summons praying that it be pleased to enlarge the time within which to apply for revision of the impugned decision. The background of the application as discernible from the affidavit is a public auction of a landed property situated on Plot No. 127 and 128 Block 'D' Part III Tabata Bima area in Dar es Salaam. The action was conducted by the 3<sup>rd</sup> Respondent on 21<sup>st</sup> September 2019 in execution of an order of Buguruni Primary Court in Probate No. 136 of 2017. The applicant emerged the highest bidder and having paid the purchase price of Tshs 130,0000,000/= he successfully moved the Registrar

of Titles to register the property in his name. A title deed bearing his name was issued.

Later, at an undisclosed date, he came to learn that the 1<sup>st</sup> respondent sued the 2<sup>nd</sup> and the 3<sup>rd</sup> respondent over the suit property in Civil Revision No. 19 of 2019 and that the final order of the said revision affected his ownership. Disgruntled, he moved this court through Civil Revision No.44 of 2019 but the same was struck out for wrong citation of the enabling provision. Since the time within which to apply for revision lapsed as he was pursuing the incompetent application, he has come to this court praying that the time be enlarged to allow him to reinstitute the application for revision. The only ground in support of the application is that the court proceedings in Civil Revision No. 19 of 2019 are marred by fatal irregularities as the applicant was judged unheard.

The 2<sup>nd</sup> and 3<sup>rd</sup> respondent did not contest the application. Both did not file counter affidavit and informed the court that they have no intention to contest the application. The 1<sup>st</sup> Respondent filed a counter affidavit contesting the application, but on the date set for a *viva voce* hearing, his counsel, Dr. Kamanija Lucas, informed the court that the 1<sup>st</sup> respondent no longer intends to contest the application. However, he prayed that the 1<sup>st</sup> respondent be reimbursed of his costs.

Submitting in support of the application, Mr. Godwin Mwapongo, learned counsel for the Applicant informed the court that, although the application

is uncontested, the applicant is duty bound to demonstrate that the delay was due to a good cause. He then adopted the affidavit and proceeded to submit that, the impugned proceedings were marred by an illegality which is a sufficient cause to enlarge the time. In fortification, he cited the decision of this court in **Stephen Mafimbo Madwary v Udugu Hamidu Mgeni & Stephen Hamis Sanga**, Misc. Civil Application No. 107 of 2016, HC- Dar es Salaam (unreported) and **National Insurance Corporation of (T) Ltd v Shengena Ltd**, Civil Application No. 63 of 2011, CAT (unreported) and argued that, in cases of illegality of the decision, the court has a duty to extend the time. Moreover, he submitted that the applicant has been diligent in pursuit of his right. After he discovered the adverse decision against him, he immediately filed an application for revision which was struck out and soon thereafter he filed this application. Based on these facts, he submitted that the application merits a positive consideration. Regarding the costs, he implored upon me to order costs in his favour.

Pursuant item 21 of Part III of the Schedule to the Law of Limitation Act [Cap 89 RE 2019], the period within which to file an application for revision is 60 days. Under section 14 (1) of the same Act, this court is mandated to enlarge the time and allow the applicant to file his application after the expiry of the prescribed period. The powers are discretionary and exercised upon the applicant demonstration good cause. Thus, even where the respondents have waived their right to contest the application as in the present case, the applicant must demonstrate to the satisfaction of the court that, indeed,

there is a good cause justifying the extension of time because, as held in of **Ratnam Kumarasamy** (1965) 1 WLR 8 (p.12):

"The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step-in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation."

In the foregoing, my task is to determine whether the applicant has sufficiently demonstrated a good cause. As stated earlier, the applicant has assigned only one ground, namely, illegality of the impugned proceeding. In law, as correctly submitted by the counsel, illegality of proceedings if established, suffice as a good for extension of time. (**National Insurance Corporation of (T) Ltd v Shengena Ltd (supra); VIP Engineering & Marketing Limited v Citibank (T) Ltd**, Consolidate Civil References No. 6, 7 & 8, CAT (unreported). Needless to say, it is now a trite law that, for an application to sail under this ground, the illegality must be of sufficient importance and apparent on the face of the record (**Omary Ally Nyamaige and 2 others v. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017 (unreported)).

Applying this principle to the present case it can be fairly concluded that the application has satisfied the test as the omission to accord any party the

right to be heard concerns a fundamental basic right and potentially nullifies the proceedings if proved. That said, I allow the application. The Applicant is to file his application within 14 days.

Regarding the prayers for costs, in the circumstances of this application, I have found it fair that they be equally shared by each party shouldering its respective costs.

DATED at DAR ES SALAAM this 11<sup>th</sup> day of June 2021.



A handwritten signature in blue ink, consisting of a stylized, cursive representation of the letters "J.L. MASABO".

**J.L. MASABO**  
**JUDGE**