

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**[LAND DIVISION]  
AT ARUSHA**

**MISC. LAND APPLICATION NO. 74 OF 2020**

*(From the District Land and Housing Tribunal for Arusha, Land Appeal No. 2 of 2019; Originating from Land Complaint No. 101 of 2016, Leguruki Ward Tribunal)*

**ZADOCK SIMON MBISE ..... APPLICANT**

***Versus***

**ELIKANAI SIMON MBISE ..... RESPONDENT**

**RULING**

*1<sup>st</sup> July & 13<sup>th</sup> August, 2021*

**Masara, J.**

The Applicant herein has preferred this application seeking for extension of time to file revision in this Court against the decision of the District Land and Housing Tribunal in Land Appeal No. 2 of 2019 which was delivered on 3/6/2020. The application is preferred under sections 14 of the Law of Limitation Act, Cap. 89 [R.E 2002] and section 95 of the Civil Procedure Code, Cap. 33 [R.E 2002]. The application is supported by the affidavit of the Applicant. The application is contested by a counter affidavit deposed by the Respondent herein.

Brief facts leading to this application are as follows: The Applicant and Respondent are brother and sister respectively. The Respondent sued the Applicant in Leguruki Ward Tribunal (the trial Tribunal) in Land case No. 101 of 2016, claiming for a piece of land measuring 2 acres (the suit land) which is located at Mianzini hamlet, Kandasha Village, Meru District within Arusha Region. The trial Tribunal delivered its judgment on 13/11/2018, declaring the Respondent the lawful owner of the suit land. The Applicant was aggrieved, he appealed to the District Land and Housing Tribunal for Arusha (the district Tribunal) vide Land Appeal No. 2 of 2019. In its judgment delivered on 3/6/2020, the district Tribunal dismissed the appeal for being time barred.

On 25/1/2019, the Respondent filed Misc. Land Application No. 25 of 2019 in the district Tribunal seeking to execute the decision of the ward Tribunal. In a ruling delivered on 20/3/2020, the application was granted and a Court broker was appointed to hand over the suit land to the Respondent. According to the Applicant, the execution is about to be carried on. The Applicant intends to challenge the decision of the district Tribunal but unfortunately, he has found himself out of time, prompting this application.

At the hearing of the application, both the Applicant and the Respondent were represented, as they were accorded legal aid from the Legal and Human Rights Centre and Tanzania Women Lawyers Association respectively. Whereas the Applicant was represented by Mr. Richard Manyota, learned advocate from the Legal and Human Rights Centre, the Respondent had her documents drawn by Ms Happiness Mfinanga, learned advocate from Tanzania Women Lawyers Association. The application proceeded by filing written submissions.

Submitting in support of the Application, Mr. Manyota averred that the district Tribunal chairperson erred by raising the issue of limitation of time *suo motu* without affording parties the right to argue on the same. He submitted that such flaw denied the parties, and specifically the Applicant, the right to be heard, which is part of the right of a fair hearing. To support his contention Mr. Manyota cited the decision of the Court of Appeal in ***Onesmo Nangole Vs. Dr. Steven Lemomo Kiruswa***, Civil Appeal No. 129 of 2016 (unreported).

According to the advocate for the Applicant, in an application of this nature, the Applicant has to adduce sufficient cause for the delay, in order to be granted extension of time sought. He fortified that, powers to extend time are within the discretion of the Court, although such powers must be exercised judiciously. In his view, by looking at the principles of fair trial which also include the right

to be heard, the Applicant is justified to be extended time sought. In support of his argument, the advocate for the Applicant cited the case of ***Oysterbay Villas Limited Vs. Kinondoni Municipal Council and Attorney General***, Civil Appeal No. 110 of 2019 (unreported). Another reason brought forth for the delay is that the Applicant was supplied with copies of necessary documents of appeal late. That by the time they were availed to him, he was already out of time. He insisted that from 13/5/2021, parties had exhibited willingness to settle the matter amicably, therefore allowing the application will foster the volition.

Contesting the application, Ms Mfinanga challenged the application for being preferred under laws that were revised in 2002, contending that such laws are not in existence. She referred to G.N. No. 140 that was published on 28/2/2020 which revised various laws, including the Law of Limitation Act, Cap. 89. She stated that the cited laws ought to be referred as [R.E 2019]. Failure to cite such laws properly, in Ms Mfinanga's view, implies that the Court is not properly moved. She made reference to ***The Registered Trustees of Archdiocese of Dar es Salaam Vs. Adelmarsi Kamili Mosha***, Misc. Land Application no. 32 of 2019 and ***Peter John Lameck Vs. Hamidu Athuman***, Misc. Land Application No. 51 of 2020 (both unreported) to the effect that failure to cite the enabling laws as [R.E 2019] implies that the Court is not properly moved.

Ms Mfinanga also confronted the complaint by Mr. Manyota that the district Tribunal chairman raised the issue of limitation of time *suo motu* stating that it was raised by the Respondent in her reply submission. She therefore fortified that the contention that parties were denied the right to argue on the limitation of time is misplaced. She insisted that the right to be heard is a constitutional right but the same is exercisable diligently and without undue delay.



On adducing sufficient reasons for the delay, Ms. Mfinanga asserted that the Applicant has failed to adduce sufficient reasons for delay both in the affidavit and the submission in support of the application. She insisted that the appeal in the district Tribunal was dismissed on 2/6/2020 and the instant application was filed on 25/9/2020, which shows that the Applicant delayed for more than fifty days. That, reasons for the delay are not canvassed in either the affidavit or in the submissions.

On the issue of illegality sought to be relied by the Applicant, Ms Mfinanga was of the view that such illegality was not made apparent by the Applicant. She cited the case of ***Finca (T) Ltd and Another Vs. Boniface Mwalukisa***, Civil Application No. 589 of 2018 (unreported) which insists that the illegality sought to be relied upon must be explained. On the ground that the Applicant failed to file his appeal in time in the district Tribunal due to network problems that failed him to generate control number, Ms Mfinanga submitted that such ground is not relevant in the application at hand. The Applicant ought to have sought extension of time in the district Tribunal before filing the appeal. In conclusion, she amplified that the Applicant failed to adduce sufficient reasons for the delay whereas the delay is found to be too inordinate. On the basis of her submission, she urged the Court to dismiss the application with costs.

I have given deserving weight to the affidavits of the parties and the written submissions by the advocates for both sides. The issue calling for this Court's determination is whether the Applicant has adduced sufficient reasons that will move the Court to exercise its discretion and grant the extension of time sought.

Both counsels for the parties herein are at one that a decision whether to grant a party extension of time to do an act that ought to have been done in time is a discretion vested in the Court. However, as rightly observed, such discretion

must be exercised judicially and in accordance with the rules of reasoning. The Court will only exercise its discretion in favour of an Applicant upon that Applicant showing good cause for the delay. What amounts to good cause was defined in the case of ***Bharya Engeneering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor***, Civil Application No. 342/01 of 2017 (unreported) in which the Court had this to say:

*"What amounts to good cause cannot be laid by any hard and fast rule but is dependent upon facts obtaining in each particular case. As we stated in **Vodacom Foundation Vs. Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (unreported); the case relied upon by the Respondent, each case will be decided on its own merits taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been explained away as well as whether there was diligence on the part of the Applicant."*

Applying the above case law in the application at hand, there is no explanation in the affidavit in support of the application as to what necessitated the delay. In the submissions of the Applicant, the main reason for the delay is the fact that the Applicant was denied the right to be heard on whether the appeal was time barred. However, this argument lacks credence because the issue of limitation of time can be raised at any stage of the proceedings. Further, as rightly submitted by the Respondent's advocate, such issue was raised at the hearing of the appeal; therefore it is presumed that parties were afforded the right to submit on the same.

The other reason put forth in the submissions is the fact that the delay to file the appeal in the district Tribunal was due to network problems that made it impossible for the Applicant to generate a control number from which he could make payments and file the appeal in time. This ground, as correctly submitted by Ms Mfinanga, is irrelevant at this stage. That argument could have been



canvassed in the district Tribunal had the Applicant applied for extension of time thereat.

According to the record, the appeal in the district Tribunal was dismissed on 3/6/2020 and the instant application was filed 25/9/2020. That is a period of more than three months. Revisions from a district tribunal to this Court are filed within 60 days. The 60 days lapsed on 4/8/2020. The period between 3/6/2020 when the appeal was dismissed and 3/8/2020 when the revision ought to have been filed is excusable and explainable. Counting from 4/8/2020 when time to file application for revision lapsed to 25/9/2020 when the instant application was filed, it is more than 50 days, and there is no explanation, both in the affidavit and in the submissions, of the reasons for such delay. I agree with the learned counsel for the Respondent that the delay is excessive and inordinate.

In applications for extension of time, it has been time and again that each day of the delay has to be accounted for. In ***Hassan Bushiri Vs. Latifa Lukio Mashayo***, Civil Application No. 3 of 2007 (unreported), the Court of Appeal insisted that:

*"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps are to be taken."*

In the light of the above decision, it is vivid that the Applicant has failed to account for each day of the delay. In his submissions, the counsel for the Applicant appears to say the Applicant was not aware that he was late up to the time he was availed with the copies of the judgment and the decree. However, there is no proof to that effect. A copy of the judgment of the district Tribunal attached in the Application shows that it was delivered on 3/6/2020 and it was signed and certified as a true copy of the original on 4/6/2020. This suffices to say that it was ready for collection within just a day after it was

delivered. The assertion that it was made available to the Applicant out of time is therefore unsubstantiated.

The Applicant also pleads illegality in the impugned decision as sufficient reason to be extended time. I am alive to the principle that where illegality exists in a decision sought to be appealed against, such illegality amounts to sufficient reason for the delay. Under paragraph 9 of the affidavit in support of the application, the Applicant states that the alleged illegality arise from the fact that the district Tribunal dismissed the appeal instead of striking it out. That had it struck out the said application, the Applicant would have had a chance to apply for extension of time to appeal.

The issue whether the Appellate Tribunal ought to have dismissed or struck out the appeal is a point of law of sufficient importance that should be determined by this Court in the exercise of its appellate or revisional jurisdiction.

In the upshot, it is my considered view that the illegality issue raised by the Applicant is a sufficient cause to warrant the grant of extension of time sought to file revision in this Court. Consequently, the application is allowed. The Applicant is granted 14 days within which to file his intended revision in this Court. Costs in the cause.

Order accordingly.



  
Y. B. Masara  
**JUDGE**

13<sup>th</sup> August, 2021