

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 28 OF 2021**

(C/F District Land and Housing Tribunal at Karatu, Misc. Application No. 78 of 2020 originating from  
District Land and Housing Tribunal at Karatu, Land Application no. 15 of 2019)

**TSAFU BAHA AKONAAY..... APPLICANT**

**VERSUS**

**VERONA MAHO HOTAY.....RESPONDENT**

**RULING**

14.06.2022 & 30.06.2022

**N.R. MWASEBA, J.**

Under Section 14 (1) of the Law of Limitation Act Cap 89 R.E 2019 the applicant, Tsafu Baha Akonaay, has brought this application seeking for the following orders:

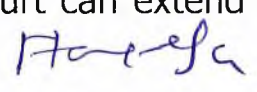
- i) That, this Honourable Court be pleased to grant an order for extension of time to file Revision out of time in Misc. Application No. 78 of 2020 from District Land and Housing Tribunal at Karatu.
- ii) Any other orders this Honourable Court shall deem fit to grant.

*Hareja*

The application was supported by an affidavit sworn by the applicant herself. It was protested by the respondent who filed counter affidavit sworn by himself.

At the hearing of an application which was done orally, the applicant was represented by Mr Ndibalema Johnson, Learned Advocate while the respondent appeared in person, unrepresented.

Submitting in support of his application, Mr Ndibalema Learned Counsel prayed to adopt their affidavit to form part of their submission. He added that being aggrieved by the decision of the District Land and Housing Tribunal of Karatu (DLHT) which was delivered on 17.02.2018, they filed an appeal to this court via Land Appeal No. 11 of 2020. However, at the same time the respondent filed an execution which led the applicant herein to file an application for stay of execution via Misc. Application No. 78 of 2020 to stay the execution pending the determination of their appeal but the said application was dismissed for being devoid of merit. Being dissatisfied with the decision that dismissed their application they want to file a revision against the said decision. However, as they are out of time, they preferred the present application so that the court can extend the time.

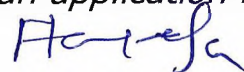


The reasons for their delay which was also advanced in their affidavit was that the applicant was sick and was dealing with her appeal before this court which was also decided in the respondent's favour and now, they are waiting for the Court of Appeal decision after they had appealed against the High Court decision.

Responding to the submission made by the applicant's counsel, the respondent prayed for her counter affidavit to be adopted as part of his submission. In her counter affidavit she stated that, the applicant failed to give sufficient reasons for the delay. The allegation of sickness was not supported with any proof and that her application for stay of execution was dismissed for want of merit. There is no illegality in the said decision as the applicant was given time to defend her case and failed to bring sufficient evidence. It was her submission that the applicant does not deserve the grant of his application.

**Section 14 (1) of the Law of Limitation Act, [Cap 89 R.E 2019]** provides that:

*"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."*

Based on the cited provision, there is no dispute that the grant of an application for extension of time is discretionary based on sufficient cause being shown and explained away by the applicant. Now the issue for determination is whether the applicant has advanced sufficient cause to warrant the grant of extension of time to file revision.

The main cause for the delay in this application as deponed in paragraph seven (7) of the applicant's affidavit is that she was sick due to her old age. Hence, she was not able to travel from Endamarariiek to Arusha to file her case. Further, under paragraph 10 and 11 she complained that there was illegality in the impugned decision which need to be determined by this court.

Regarding the issue of sickness, the applicant had just mentioned it under paragraph seven (7) of her affidavit but no explanation has been given to prove that her sickness prevented her from pursuing her case. This was well stated by the Court of Appeal in the case of **Christina Alphonse Tomas (As Administratrix of the late Didass Kasele Deceased) Vs Saamoja Masingija**, Civil Application No.1 of 2014 (CAT- Unreported) where the court held that:

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*"As the applicant's counsel failed to show that the sickness, he is suffering from is one which could have prevented him from attending the Court for the hearing of the application because there is no medical support, we dismiss the application with costs."*

Being led by the above decision, I find this ground to be weak as the applicant has not proved before this court that she was sick. She did not attach any medical report to prove that she was really sick to the extent of failing to appear before the court and prosecute her revision.

And for the issue of illegality the court has decided in numerous cases including the case of **Finca (T) Limited and Another Vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (CAT- Unreported) which stated that:

*"It is, however, significant to note that the issue of consideration of illegality when determining whether or not to extend time is well settled and it should be borne in mind that, in those cases where extension of time was granted upon being satisfied that there was illegality, the illegalities were explained."*

Guided by the cited authority, in our present application apart from the failure to account each day of delay which is one of the requirements to extend time (See the case of **Bushiri Hassan V. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), the illegality in this case was

*Hanya*

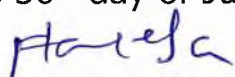
just mentioned and underlined but nothing was explained to show that that there was illegality. The so-called illegality was based on the fact that the tribunal denied to grant stay of execution while there was an appeal pending at the Court of Appeal and that the hon Chairman required the applicant to deposit security of unspecified money. In my considered view this is not illegality. But they are factors to be complied with before granting stay of execution. Thus, this ground has no merit.

Generally, this court finds that no reasons at all have been advanced by the applicant in accounting for the days of delay after the application for stay of execution was dismissed by the DLHT. There is no proof that she was really sick to the extent of failing to appear before the court and prosecute her revision. And no explanation to show the illegality.

Having forestated, the application is dismissed for want of merit. Every party shall bear its own costs because the applicant instituted this application in *forma pauperis*.

Ordered accordingly.

**DATED at ARUSHA** this 30<sup>th</sup> day of June 2022.

  
**N.R. MWASEBA**

**JUDGE**

**30.06.2022**

