

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION No. 08 OF 2021

(C/f Application for execution No. 361 of 2015 District land and Housing Tribunal for
Arusha at Arusha)

BABUU MANASE..... APPLICANT

VERSUS

DANIEL MIBAKU (An administrator of the estate

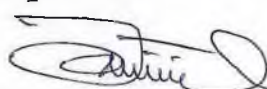
of the late **LESIKARI SANARE**)**RESPONDENT**

RULING

2nd June & 22nd July 2022

TIGANGA, J


In this application, the applicant seeks for an order for extension of time to file revision against the decision delivered in Application for Execution No. 361 of 2015 before the District Land and Housing Tribunal for Arusha which struck out the application for execution referred to herein above and ordered for the retrial of the land dispute which commenced before Oljoro Ward Tribunal, for which an application for Execution No. 361 of 2015 was

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before the District Land and Housing Tribunal for Arusha. The applicant also asked for any other relief which this Court may deem fit to grant.

The application was preferred by the chamber summons made and filed under section 14 of the Law of Limitations Act [Cap. 89 R.E 2019] and section 95 of the Civil Procedure Code [Cap 33 R.E 2019] and any other enabling provision of the law. It was also supported by an affidavit of sworn by the applicant in which the applicant narrated the historical background of the fact which gave rise to this application and the reasons which lead to the application for execution to be struck out, but he has never told the court in the affidavit the reasons for his delay.

The application was opposed by the counter affidavit sworn and filed by the respondent in which he disputed to be the Administrator of the estate of the late Lesikar Sanare, and attached the letter of the Arusha Urban Primary Court which indicated that the administrator of the estate of the late Lesikar Sanare is Zephania Leskar. Along with that counter affidavit, the respondent filed the notice of preliminary objection that, the application has been preferred against the wrong respondent contrary to Order 1 Rule 10(2) of the Civil Procedure Code [Cap. 33 R.E 2019]. However, on 09th May 2022 Mr. Rashid Shabani the Counsel for the respondent, withdrew the preliminary



objection, which act paved the way for the hearing of the application on merit.

At the hearing of the application, both parties agreed to argue the application by way of written submissions. The submission in-chief is just a replica of the affidavit sworn and filed in support of the application which briefly goes as follows; that the reasons that caused his failure to file his appeal within time are that, the decision of the District Land and Housing Tribunal in Misc. Application for Execution No. 361 of 2015 was struck out and the District Land and Housing Tribunal ordered the matter to go back to the Ward Tribunal for retrial after failure by Oljoro Ward Tribunal to forward the records of Land Complaint No. 1 of 2005 to the District land and Housing Tribunal, as shown in annexure B1.

He further submitted that, the Secretary, Chairman and members of Oljoro Ward Tribunal convened a meeting and sent the minutes of the Ward Tribunal to the District Land and Housing Tribunal for Arusha informing its Chairperson that, the records and the judgment which the applicant was holding are valid and there are no other records concerning that case before the Ward Tribunal. He further submitted that, annexure B3 be referred.

He further submitted that, on the 10th of December 2020 the Applicant thought it right to inform the Deputy Registrar of the High Court of Tanzania Arusha Registry informing him the decision above, but he was replied on the 26th January 2021 that he should file appeal or revision as the case may be. In his view, the raised grounds are sufficient reasons for extension of time. He further submitted that, the applicant did not sleep on his right, he made several follow up on his case to the proper authorities and immediately after the letter of the Deputy Registrar he filed applied for extension of time.

Last but not least, he submitted that, the application for extension of time is the only remedy available. Since the delay was technically caused by the tribunal, the applicant has been obedient and never slept on his right for he has been diligent for his right in pursuing for his rights and he has accounted for each day of delay.

In the reply, the respondent submitted that, the case giving rise to this application began in 2005 in the Ward Tribunal for Oljoro Ward within Arusha District, vide Land Complaint No. 01 of 2005 between **Babuu Manase versus Lesikari Sanare**, whereby the Oljoro Ward Tribunal, delivered its judgment in favour of the applicant herein. Originally the land in dispute was

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owned by Sanare Kaitonii since 1972 when they shifted from Monduli after the land they used to stay was taken by the government for military use.

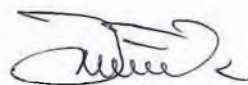
Due to the neighbourhood and relativeness between Sanare Kaitonii and Manase, Sanare invited Manase and gave him part of his land at Oljoro. However, later on, Manase returned the said land to Sanare Kaitonii as he shifted to Handeni, Tanga in 1997 – 1998. Due to that facts Sanare Kaitonii transferred the said land to his son Lesikari Sanare.

In the application for the execution i.e Execution No 361 of 2015 before District Land and Housing Tribunal for Arusha, the applicant herein sued Daniel Mibaku as an Administrator of the estate of the late Lesikari Sanare, but the said respondent was never appointed as Administrator of the estate of the mentioned deceased. Hence it becomes incorrect for the applicant to sue or file an application against him because not only that he has no locus stand in the said land but also he even lacks interest in the said land. The respondent's Counsel further submitted that, basing on the above facts, then the application should be dismissed with costs.

He further stated that, the ruling which struck out Execution No. 361 of 2015 after there was no record from the Oljoro Ward Tribunal had only

one remedy which was to start the case afresh not otherwise. In his view, writing and forwarding a letter to the District Land and Housing Tribunal informing her by the minutes of the meeting of the Ward Tribunal members, that the judgment which is possessed by the applicant is the real one, it is not correct to substitute the original record of the tribunal. What was required was the original record which would have assisted the District Land and Housing Tribunal to continue with execution. In his view, the courts' records are not communicated by way of minutes of the meetings but rather the files having copies of proceedings as well as copies of decisions particularly the one intended to be executed.

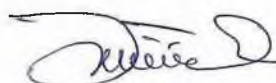
The respondent's further submitted that, the said ruling of the District Land and Housing Tribunal on execution No. 361 of 2015 was delivered on the 12th June 2017, the letter the applicant alleges to have written to the Deputy Registrar of the High court was of 10th December 2020 and he was replied on the 26th January 2021, counting from 12th June 2017 up to 10th December, 2020 when he wrote a letter to the DR is the interval of 3 solid years and 5 months. The issue here is why the applicant didn't account for that whole period of delay.



That was the end of the respondent's reply submission. There was no rejoinder filed by the applicant. That being the case, the issue for determination by this court is whether the applicant has demonstrated good and sufficient cause to be granted extension of time.

First and foremost, I find it important to start with legal issues pertaining to the provision upon which this court was moved in this application. This application was filed under section 14 of the Law of Limitation Act (supra) and section 95 of the Civil Procedure Code (supra). However, the respondent, has not raised this concern, I find that the provision used are not specific. While section 14 of the Law of Limitation Act is relevant but not specific, section 95 is not applicable in matters which originates from the Ward Tribunal, although the application has not been brought under specific law, it seems the same has not prejudiced the respondent because the counsel for respondent has not complained about that. Therefore, under the overriding objective principle, I find in the circumstances of this case the wrong citation is curable as justice demands the application to be dealt with on merits.

Now having so held, section 38(1) of the Land Dispute Courts Act [Cap 216 R.E 2019] requires the appeal from the decision of the District Land and

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Housing Tribunal in matters originating from the Ward Tribunal to be lodged within 60 days. That provision does not provide for the time within which revision should be filed. However, inferring from the provision of section 41 of the same law, the time for appeal and revision to the decision of the District Land and Housing Tribunal made under its original jurisdiction, is in both cases i.e appeal and revision 45 days. to the contrary, section 38 of the same law does not provide for the time for revision. Now borrowing leaf from section 41 of the same law as elaborated above, I find that the time for filing revision to this court for matters arising from the decision of the District Land and Housing Tribunal but which originates from the Ward Tribunal is also 60 days.

Having so found, it is obvious that the applicant was late as the ruling which is sought to be challenged was delivered on 12th June 2017, the application for extension of time was filed on 26th January 2021, the interval of 3 years and 5 months. The applicant argues that, he delayed because he wrote the letter to the Deputy Registrar who did not reply immediately. The letter to the Deputy Registrar of the High Court of Tanzania Arusha District Registry was written on the 10th of December 2020, and it was replied on the 26th January 2021.

As earlier on pointed out that the applicant did not demonstrate the reasons for his delay, in the affidavit filed in support of the application and so is in the submission filed in support of application. However, even if we are to assume that failure of the Deputy Registrar to reply to the letter in time is the cause of delay, then the time exempted must be from 10th December 2020, up to 26th January 2021 when the Deputy Registrar replied to the letter. The applicant did not account for all days from 12th June 2017 a period of over 3 years and 5 months. This court made reference on the case of **Lyamuya Construction Limited vs Registered Trustees of the Young Women's Christian Association of Tanzania**, Court of appeal of Tanzania at Arusha, Civil Application No. 02 of 2010 where, Massati J.A (as he then was), held *inter alia* setting the factors to consider in granting or refusing the application for extension of time as follows;

" (a) *The applicant must account for all the period of delay.*

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of



sufficient importance; such as the illegality of the decision sought to be challenged."

It is my humble view that with regard to the above position, specifically guidelines number (a), (b), (c) the applicant has failed to account for the whole period of delay of 3 years and 5 months, a delay which is inordinate and from the conduct of the applicant, it can be concluded that, he acted negligently and has not pleaded any point of illegality to entitle him to an extension of time.

That leads to the conclusion that, the applicant has failed to show good cause for him to be entitled to extension of time. That being the case, the application is hereby dismissed for want of merits as the application suffers deficit of good cause to entitle the applicant to extension of time. The dismissal is with costs.

It is accordingly ordered.

DATED at **ARUSHA**, this 22nd day of July, 2022




J.C. TIGANGA

JUDGE