

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**MISC. LAND APPLICATION NO. 67 OF 2020**

(Originating from Land Application no. 66 of 2019 of the District Land and Housing Tribunal for Singida at Singida)

**NATIONAL HOUSING CORPORATION ..... APPLICANT**

**VERSUS**

**1. SILVANUS JOHN KESSY**

(Adm. of the Estate John A. Kessy)

**2. THOMAS MCHAKI**

**3. JOSEPH JOHN KESSY**

**4. BAHATI MUSHI**

**..... RESPONDENTS**

**RULING**

*9/5/2022 & 24/5/2022*

**MASAJU, J**

The Applicant, National Housing Corporation, has filed in the Court a Chamber Summons Application made under Section 14(1) of the Law of Limitation Act, [Cap 89] seeking extension of time for her to file Application for Revision against the decision of the District Land and Housing Tribunal for Singida in Land Application No. 66 of 2019. The Application is supported by an Affidavit sworn by Ms. Ndigwako Joel, the Applicant's principal officer and it is against the Respondents Silvanus John Kessy (An Administrator of

the Estate of the late John A. Kessy), Thomas Mchaki, Joseph John Kessy and Bahati Mushi.

The 1<sup>st</sup> Respondent contests the Application, he filed a Counter Affidavit in the Court to that effect. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not file their Counter Affidavit (s), if any.

The Application was heard in the Court on the 9<sup>th</sup> day of May, 2022 *inter partes* between the Applicant and the 1<sup>st</sup> Respondent and *ex parte* against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents who were duly served and never entered appearance in the Court neither did they file Counter Affidavit(s), if any. The Applicant was in the service of Ms. Ndigwako Mwakajwanga, learned State Attorney while the 1<sup>st</sup> Respondent was represented by Mr. Isaya Edward Nchimbi, the learned counsel.

Submitting in support of the Application, the Applicant adopted her Affidavit which gives the background and the reasons for the Application in the Court. The Applicant added that in **Samwel Sichone V. Bulebe Hamis (CAT) Civil Application No. 8 of 2015, Mbeya Registry** the Court held that where the Applicant has demonstrated good cause the Court is warranted to exercise judicial discretion to grant the Application. That, in this Application the Applicant demonstrates good cause in paragraphs 9-17 of the Affidavit. That, the Applicant was not a party to the impugned Application before the trial Tribunal. That, she became aware of the decision thereto later on hence unsuccessful Application to the trial Tribunal. The applicant cited the case of **Sebastian Ndaula V. Grace Rwamata (CAT) Civil Application No. 4 of 2014 Bukoba Registry** to support her averments.

That, there is serious illegality occasioned by the trial Tribunal. That, the said illegality is non affording the Applicant the right to be heard in the trial Tribunal.

The 1<sup>st</sup> Respondent contested the Application by submitting that the alleged serious illegality in paragraph 17(i) of the Applicant's Affidavit does not qualify for serious illegality. That, there is no reasonable ground that amounts to good cause for granting the Application. The Respondent prayed the Court to dismiss the Application with costs. That, the Applicant's rights/interests, if any, shall not be prejudiced if the Application is not granted, for there are some other recourse the Applicant can enforce in order to acquire the suitland.

In rejoinder, the Applicant maintained her submissions in chief and added that there is no any other recourse/remedy upon which she can acquire the property in question. That, the Tribunal's decision was illegal as so deponed in paragraph 17 of the Affidavit.

The Applicant prayed the Court to grant the Application with costs. That is what was shared by the parties in the Court.

The decision of the trial Tribunal in Land Application No. 66 of 2019 was delivered on the 9<sup>th</sup> day of April, 2020. The Applicant was not a party in the said suit. The Applicant allegedly came to notice the existence of the land dispute when the 1<sup>st</sup> Respondent filed an Application for execution in the trial Tribunal. That is when the Applicant unsuccessfully filed for objection proceedings to contest the same alleging that the property in dispute belongs to her (Annexure NHC-2).

The objection proceedings was filed on the 23<sup>rd</sup> day of April, 2020 and the decision thereto delivered on the 20<sup>th</sup> day of May, 2020. The Applicant then filed in the Court Land case No. 7 of 2020 on the 28<sup>th</sup> day of May, 2020 which she later withdrew and decided to file this Application for extension of time for her to file an Application for Revision in the Court.

There is no dispute that the Applicant came to notice the presence of the land dispute during execution proceedings and acted right away, 14 days

after the date of Ruling of the main suit. Thus, from the moment up to now, the Applicant has been making several efforts in pursuing her right, if any, at the trial Tribunal as well as in the Court. Therefore, there is no dispute that the Applicant has been acting in good faith all along. Section 21(2) of the Law of Limitation Act, [Cap 89] provides, thus;

*"21 (2). In computing the period of limitation prescribed for any application, the time during which the Applicant has been prosecuting in good faith with due diligence, another civil proceeding whether in a Court of first instance or in a Court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it."*

In the instant case, the Applicant unsuccessfully prosecuted several suits against the Respondents in good faith in the trial Tribunal and in the Court, hence the Court is of the considered position that there is a sufficient ground for extension of time for the Applicant to file her intended Application for Revision, if any.

That said, the meritorious Application is hereby granted accordingly. The Applicant shall file the intended Application, if any, in the Court within 60 days of this Ruling.

The parties shall bear their own costs.



  
GEORGE M. MASAJU

**JUDGE**

24/5/2022