

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION No. 57 OF 2022

(C/F District land and Housing Tribunal for Manyara Region Application No. 04 of 2014)

ELIZABETH LAWEI (*As an Administratrix of the Estate of*

the late Joseph Uluguthu)**APPLICANT**

VERSUS

YONA HUMAY.....**RESPONDENT**

RULING

10th August & 28th September 2022

TIGANGA, J.

The applicant herein applies for time enlargement to appeal before this court following her dissatisfaction with the decision of the District Land and Housing Tribunal for Manyara at Babati in Application No. 04 of 2014. The applicant moved this court by way of chamber summons and an affidavit under section 41(2) of the Land Disputes Courts Act, [cap 216 R.E 2019] and

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section 95 of the Civil Procedure Code, [Cap 33 R.E 2019] and any other enabling provision of the law. The application was opposed by the respondent by filing the counter affidavit in which the grounds for opposition of the application was actually presented. The counter affidavit was filed with the notice of preliminary objection, which was later withdrawn by the counsel for the respondents, thus paving way for the hearing of this application.

With consent of the parties and leave of the court, the application was argued by way of written submissions. Parties complied with the filing schedule.

In support of the application, the counsel for the applicant submitted that, under paragraphs 1 to 8 of the applicant's affidavit in support of the application the applicant states that from 29th February, 2016 when the judgment in Application No. 4 of 2014 was delivered to the 12th May 2022, he has been in court searching for justice. The learned Counsel further submitted that paragraphs No. 3, 4, 5, 6, 7 and 8 of the applicant's affidavit counts for each day of delay as required under the law. The counsel also submitted that, annexure E1 to annexure E4 is the proof of what is stated from paragraph 3 to 8 of the applicant's affidavit in support of the

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application. He further submitted that, the applicant herein has been in the court corridors searching for justice since when the judgment in Application No. 04 of 2014 was delivered.

The Counsel for the applicant submitted that, the application before this court has based on the principle of change of circumstances in the sense that, the first administrator of the estate of Joseph Uruguthu became incapable of performing his duties. Following that incapacity, the court relieved him from his duties and appointed Elizabeth Lawei to replace him. After the first administrator was relieved from his duties, then all what he did went away with him and a new administratrix, that is, Elizabeth Lawei had never applied for the extension of time. According to him, the law is clear that, whenever there is change of circumstance, the second application can be filed, the change of an administrator in this case is the change of the circumstance hence the applicant herein is legally justified to file this application.

The Counsel for the applicant further submitted that, since the delivery of the judgment was done while the 1st administrator Joseph Uruguthu had undergone life extinct, it is an illegality which requires this court's

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consideration since the judgment was delivered in absence of the legal representative for the deceased is chosen. Since it is a trite law that, civil actions survive, the death of the parties do not take away the right or duty of them, they survive.

The learned counsel further submitted that, the other illegality in the judgment is that, the applicant when sued before the Tribunal lacked locus standi since the applicant therein was claiming the said land on behalf of his deceased further as shown at page 1 of the judgment of the District Land and Housing Tribunal for Manyara at Babati.

In the reply the counsel for respondent submitted that, the fact that the applicant has been seeking for his rights since February 2016 till May 2022 hold no water in justifying the delay since there is nowhere it is evidenced that the applicant herein as an interested party being the wife of the deceased participated in the legal battle commenced by the previous administrator of her late husband.

The counsel further submitted that, the applicant is a stranger to all the proceedings conducted in both the trial tribunal and the High court since

she is not seen in both trial tribunal's records as well as the High court records in the application filed previously for extension of time.

With regards to the limbs of illegality in the decision of the District Land and Hosing Tribunal for Manyara at Babati. The fact that the judgment was delivered while the 1st respondent had already died is unjustifiable, since the moment the trial tribunal ended, the hearing of the matter the 1st respondent was alive. He was not around during the pronouncement of the judgment as it was ordered by the tribunal due the fact that by that, at that moment he had already passed away. He further submitted that, since the deceased was present during the hearing of the matter till its end, his absence during the pronouncement of the judgment affected no right of his and did not in any way prejudice him.

He further challenged the second limb of illegality raised by the applicant's counsel basing on the fact that, the applicant before the trial tribunal lacked *locus standi*. He submitted that, since the applicant before the trial tribunal in Land Application No. 04 of 2014, sued as the owner of the land in dispute it goes without saying that, he had *locus standi* as he inherited the said land from his late father. The counsel asked the application



to be refused on the strength of the ground and argument he has put forward.

In rejoinder submissions, the Applicant's counsel reiterated his submissions in chief. Considering the material before me, the issue for consideration and determination before this court is whether this application constitutes good causes for extension of time:

The guidelines in applications for extension of time are as highlighted by the court in the case of **Lyamuya Constructions Limited Company Ltd vs Board of Registered Trustee of Young Women's Christian association of Tanzania**, civil application No. 02 of 2010 (unreported), *firstly* that the applicant must account for the whole period of delay, *secondly* that the delay should not be inordinate, *thirdly* that the applicant must show diligence, not apathy, negligence, sloppiness in the prosecution of the action that he intended to take, *fourthly* that there is illegality which arises from the violation of fundamental legal principles.

The above case gives the guiding principles to be considered in determining the application for extension of time. The issue is whether, in this application the applicant has managed to meet the minimum threshold



of the requirement to be granted the extension of time. Starting with the first ground given by the applicant that, the applicant has delayed due to the fact that he has always been in corridors of the court seeking for justice since the 29th February 2016 to 12th May 2022, I have gone through the records of the courts mentioned by the applicant's counsel as the court corridors attended by the applicant in seeking for her rights, there is nowhere it is proved that, the applicant is the one who has been seeking for the said justice. The records show that, the applicant's late husband is the one who has been seeking for such justice and his case was struck out. In the appellate stage the records show that, the applicant's son in law one Amos Gurti who commenced the duty of administration of the applicant's late husband estates applied for extension of time following his late Father-in-law unsuccessful move in the case before the trial tribunal.

It is my considered view that, this ground fails to justify the applicant's application for extension of time. Even if we assume that, it could be possible that, from 29th February 2016 to 12th May 2022 the period of almost 5 years still could be considered as very inordinate for someone to appeal, the period implies lack of seriousness on the part of the applicant and this grounds fails to account for the whole period of five years' delay.

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