

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MAIN REGISTRY
AT DAR ES SALAAM
MISCELLANEOUS CAUSE NO. 49 OF 2022
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
ORDERS OF MANDAMUS AND CERTIORARI**

AND

**IN THE MATTER OF DECISION OF THE ASSISTANT COMMISSIONER FOR
LANDS DATED 14TH APRIL, 2022**

BUILDING, WATER AND EARTH WORKS LTD..... APPLICANT

VERSUS

THE ASSISTANT COMMISSIONER FOR LANDS.....1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

11/11/2022 & 25/11/2022

MZUNA, J.:

This is an application for leave to file an application for prerogative orders of mandamus and certiorari by the applicant herein, Building, Water and Earth Works Ltd, a Limited Liability Company duly registered in Tanzania. It has been preferred against the decision of the Assistant Commissioner for Lands made on 14th April, 2022 in respect of Plot No. 110, Mikocheni, Light Industrial Area, Kinondoni Municipality, in Dar es salaam whereby she was refused renewal of the expired 33 years right of occupancy on grounds of failure to comply with the terms of the grant.

Brief background leading to this dispute is simple and straight forward. The applicant bought the disputed plot from Lime Products Limited. The title was registered under her name on 26th January 2004. The 33 years right of occupancy tenure was due from 1st October, 1987 and expired on 30th September, 2020. On 22nd March 2022, through a letter with reference No. BWE/KM/01/2022, the applicant requested for renewal of her title at Kinondoni Municipal Council, a request which however was denied by the Registrar of title. The advanced reasons for refusal being non-compliance with the conditions attached to the title including among others that she made no improvements thereon and therefore in breach of the terms of the grant.

The applicant says in refusing to allow her renew it and thereby grant it to another third party without affording her right to be heard by responding to the allegations, contravened the right to be heard. That the decision is unfair, irrational, un procedural and was reached unilaterally without affording the applicant an opportunity to improve hence the instant application.

All this was done at the time when the applicant says had paid all the outstanding annual land rents as well as substantial developments on the plot by erecting buildings which are used for office of the company

worth Tshs 3,181,309,500 according to a valuation report conducted by the applicant, as per the filed affidavit.

The respondents have disputed the above averment in that she had not complied with all the conditions attached to the certificate of title. That the alleged payment of rent was not done annually and even the alleged valuation report was not approved by the Chief Government Valuer. More seriously, the application for extension of the grant, was made after the expiry of two years from the date of its expiry.

When the application was called on for hearing before me, Mr, Ashiru Hussein Lugwisa, the learned Advocate appeared for the Applicant whereas Ms. Narindwa Sekimanga, learned State Attorney appeared for the 1st and 2nd respondent.

The main issue is whether there has been adduced reasonable grounds upon which leave can be granted?

Arguing in support of the application, Mr. Lugwisa adopted the affidavit of the applicant to form part of his submission. He submitted that grounds for application for leave are based on the illegality and irrationality in that the applicant was denied the right to be heard while she had been in possession of the plot and complied with all the terms and conditions as evidenced by annexure 'B' to the affidavit. She applied

for renewal vides a letter annexed as 'C' but the same was refused through a letter annexed as 'D' allegedly that there was non compliance with conditions. It was revealed through the first respondent's investigation that another person developed the plot.

Mr. Lugwisa further submitted that the decision of the Registrar of Title is irrational and relied on the case of **Re Application by Hirji Transport Service** (1961) EA 88, where Biron J (as he then was) emphasized the need of establishing a prima facie case where application for leave if judicial review is being sought. That the 1st respondent wrongly exercised the discretion. The decision was made without affording the applicant right to be heard as provided for under section 44(4) of the Land Act, Cap 113 (RE 2019), thus the decision is a nullity. He prayed for this court to grant the sought application.

On her part, Ms. Sekimanga, the learned State Attorney strongly objected the application relying in her submission on the filed counter affidavit and reply statement. She was very categorical that the application does not meet three conditions required for the grant of leave which are set under Rule 5 & 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules

2014 namely: - (i) Presence of an arguable case (ii) The application must be filed within six months and; (iii) The applicant must have interest.

On the issue of absence of an arguable case, she said that the 33 years right of occupancy term expired in 2020 from 1997 to its grant. The applicant failed to apply for renew upon the expiry of 33 years tenure. Para 3 (f) of the statement shows there was an application for renew but a letter has not been attached. The referred letter of 22nd March, 2022 is after two years after the expiry of the tenure and therefore out of time.

More so, that even if she was challenging the decision of the Commissioner for Land's letter of 14th April, 2022 (annexture 'D'), that letter was just a notification that his right of occupancy had expired since 30/09/2020 with reasons for non- renewal of the conditions stated in the right of occupancy. So in her view, annexture 'D' is not a response letter to annexture 'C' as alleged in the applicant's submission instead annexture 'C' was a request for valuation on the said land. She submitted that there is no arguable case.

On the absence of sufficient interest in the matter, she said that the right of occupancy expired since in 2020 there being no application for renew. The case of **Emma Bayo v. The Minister for Labour & Youths Development & 2 Others**, Civil Appeal No. 79 of 2012, CAT at page 8

and that of **Halima James Mdee & 18 Others v. The Registered Trustees of CHADEMA & 2 Others**, Misc cause No. 27 of 2022 (both unreported), were cited in support of a proposition on what is a prima facie case that it is a legally required rebuttable presumption which establishes a party's case by adducing evidence to justify a verdict in his favour.

She insisted that from the above submission, no prima facie case which has been established by the applicant. She urged the court to dismiss the application with costs.

In rejoinder submission, Mr. Lugwisa maintained his submission in chief that the application is within time. He ruled out the allegation that there is no arguable case in that the alleged letter is not a mere notification but a decision in violation of the principles of natural justice. He made reference to the case of **Cowasjee (Aden) vs. Cowasjee** (1963) EA 84 where the court held that a person must be involved in the inquiry or Tribunal's decision.

He ruled out the allegation that the applicant has no interest based on the annexed evidence of payment of land rent annexed as 'A' to the affidavit.

Mr. Lugwisa submitted further that, the case of **Halima Mdee & 10 Others v. Registered Trustee of CHADEMA** (Supra), **Workers of Tanganyika Textile Industries Ltd v. Registrar of the Industrial Court of Tanzania & Others**, High Court Misc. Civil Application No. 144 of 93 (unreported) insisted that only an arguable case has to be raised at leave stage. Proof would be required during hearing of the main application.

I should express my profound gratitude to the well-researched submissions. Rule 5 (1) and (2) (a), (b), (c), (d), (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 to which this application relates, provides a guideline on the grant of leave. Leave is mandatory before applying for prerogative orders of certiorari and mandamus. The conditions to be considered by the court before granting leave are well set out in **Emma Bayo v. The Minister for Labour and Youths Development and Another** (Supra). The court held at page 8 that:-

"It is at the stage of leave where the High Court satisfies itself that the applicant for leave has made out any arguable case to justify the filing of the main application. At the stage of leave the High Court is also required to consider whether the application is within the six months limitation period within which to seek a judicial review of the decision of a tribunal subordinate to the High Court. At the leave

stage is where the applicant shows that he or she has sufficient interest to be allowed to bring the main application."

In exercising its discretionary powers vested to this court, the above three conditions must exist before granting leave. If I may weigh them starting with the time limitation, followed by presence of an arguable case and an interest in the matter; A decision of the Assistant Commissioner for Lands terminating the right of occupancy of the disputed plot occupied by the applicant was made on 14th April, 2022. The instant application was filed on 16th September, 2022 which is well within the prescribed time of six months. I agree with Mr. Lugwisa that this application was filed on time. On the issue as to whether the above letter amounts to a decision or a notice, that is subject to determination in the main application as it is contentious. The case of **Cosmas Mwaifwani vs. The Minister For Health, Community development, Gender, The Elderly And Children and 2 Others**, Civil Appeal No. 312 of 2019 CAT (unreported) at page 9 is very illustrative on this. On appeal, when dealing with issue of time bar at leave stage, the court observed:-

"...We are in agreement with Mr. Tibanyendera that, the trial court wrongly dealt with the preliminary objection under discussion. The reason being that, in accordance with the affidavit and counter affidavit on the record, whether the appellant was availed with the outcome of the decision after expiry of more than a year and whether the delay was calculated so as to

*deny the appellant his right to seek remedies against the decision of the first respondent was seriously contentious. Therefore if the Principle in **Mukisa Biscuits Co. v. West End Distributors** (1969) EA 696 had been followed by the trial court, the factual depositions in the affidavit would have been presumed to be true. As a result, the purported preliminary objection should have been overruled for being premature and the application heard on merit.”*

Surely the purported objection sort of by the learned State Attorney that there is no decision or that the application was made out of time, at leave stage, which are contentious, is no doubt a failure to acknowledge that what is pleaded in the affidavit and counter affidavit must be ‘presumed as true’. Application for renewal of his title and refusal to renew, are pleaded under paragraphs 3(f) and 3(g). Its proof will be subject for determination at the hearing stage of the certiorari and mandamus not at leave stage.

I find that the applicant who as per the pleaded facts was affected, has an arguable case. She has interest in the matter, being the occupier of the disputed plot since 1987 up to the time when it was revoked in 2022 upon expiry of the 33 years’ term of the right of occupancy. I am therefore convinced that the application was made well within time, there is an arguable case as well as interest in the matter.

The application for leave to apply for the orders of mandamus and certiorari against the decision of the Assistant Commissioner for Lands of 14th April, 2022 refusing the renewal of the right of occupancy in respect of Plot No. 110 Mikocheni, Light Industrial Area, Kinondoni Municipality, Dar es salaam is hereby granted with no order as to costs.

Dated at Dar es Salaam this 25th day of November, 2022.

11/25/2022

X 

Signed by: M G MZUNA JUDGE

