

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

MISC. LAND APPLICATION NO. 139 OF 2022

*(Originating from Babati District Land and Housing Tribunal in Land Application No.
28 of 2018)*

**RUKIA MOHAMED KAIRA (An administratrix of the Estate of
the Deceased Mohamed Kaira..... APPLICANT**

VERSUS

**JUMANNE ALLY KWEJI (As Administrator of the Deceased
Ibrahim Salim HotiRESPONDENT**

RULING

02nd & 18th November 2022

TIGANGA, J.

This is an application for extension of time filed before this Court under Section 52(2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] and Section 14(1) and (2) of the Law of Limitation Act, [Cap. 89 RE 2016]. The application was filed by chamber summons supported by the affidavit affirmed by the applicant in which the applicant deposed the grounds and reasons for the application. The application was opposed by the respondent by filing the counter affidavit.

The factual background of the matter stands as hereunder, the respondent filed an application in the District Land and Housing Tribunal for Babati at Babati herein referred to as the "DLHT" claiming ownership over the land alleged to have been trespassed by one Mohamed Kaira. In the course of various mentions before the "DLHT" the said Mohamed Karia passed away on 13th March 2021. Thus, following such untimely death, on 18th November, 2021 the DLHT was informed of both, the death and appointment of Rukia Mohamed Kaira, an administratrix of the estate of the late Mohamed Kaira who was appointed by the Babati Primary Court seating at Gallapo. The appointment was made on 11th October 2021. Because of that, the amendment of the application in order to involve the administratrix of the estate of the deceased Mohamed Kaira was preferred and the order for so doing was given by the DLHT. Unfortunately, it did not materialize and on the date not disclosed in the impugned ruling, the DLHT pronounced the so-called ruling which the applicant is struggling to challenge.

The ruling declared the respondent (then applicant) lawful owner of the land in dispute under the umbrella of the administration of the deceased's estate Ibrahim Salim Hoti.

Aggrieved by such decision of not joining her to the case and pronouncing the ruling in favour of the respondent, the applicant has preferred this application seeking for extension of time in order to apply for revision against the ruling of the DLHT. The reason for preferring revision is obvious that the applicant had never been joined as a party to the Application No. 28 of 2018.

The issue calling for determination by this Court is whether the applicant has shown good cause under which this court can base its discretionary power to enlarge the time sought.

In this application, the applicant was represented by Maige, learned Advocate who appeared to hold brief for Mr. Thadei Lister, learned Advocate with instructions to proceed. Whereas Mr. John Lundu appeared for the respondent. The submissions were orally presented.

In his submission in chief made by Mr. Maige in support of the application, he contended that, the DLHT was informed on the death of the late Mohamed Kaira and it gave orders as to the substitution and amendment of his name with that of Rukia Mohamed Kaira, the administratrix of the estate. With due respect to the counsel, the learned Advocate mostly argued on so many unrelated issues before centring his

arguments on two grounds both on the main ground of illegality; to wit *functus officio* and denial of the right to be heard.

On *functus officio*, Mr. Maige was of the view that, the order of the DLHT directing that it was the applicant who was supposed to make amendment of the application in order to join the administratrix of the estate of the late Mohamed Kaira and thereafter changing the same that it was the respondent Advocate who was supposed to make such amendment was contravening its prior order and therefore fatal, on the doctrine of *functus officio*. That, the administratrix of the estate of the late Mohamed Kaira was there waiting to be joined but instead, the DLHT proceeded to dismiss the application.

He submitted further that, the applicant struggled to apply for being joined in that application but unfortunately, she found herself time barred due to being lately supplied with copies of the decision which were supplied to her on 31/08/2022.

On this point Mr. Lundu counteracted that, the applicant was appointed the administratrix of the estate of the late Mohamed Kaira on 11/10/2021. That the law limits to join the administrator of the deceased's estate within 90 days from the date of the death of the deceased. That up to 18/11/2021 when the information for appointment

was given to the DLHT already 90 days had been expired. That the applicant was given a copy on 26 /07/2022 but she filed the application on 21/09/2020. That because of that, the applicant was negligent therefore the application is afterthought and it was filed after the application had been overtaken by events. He lastly argued that, there is no illegality shown by the applicant's Advocate but only signification of recklessness, said Mr. Lundu.

On this point, before going to the actual ground of application raised, I will first say a word or two on what amounts to illegality in the context of extension of time to file application for revision out of time. It has been ruled more than often that, for the ground of illegality to constitute good cause for the purpose of extension of time the said illegality must be apparent on the face of record and must be of sufficient importance. See the cases of **Noble Motors Limited versus Umoja wa Wakulima Wadogo Bonde la Kisere (UWABOKI)**, Civil Application No. 285/01 of 2016 CAT at DSM (Unreported), **Elias Masija Nyang'oro and 2 Others versus Mwananchi Insurance Company Limited**, Civil Application No. 552/16 of 2019, **Kibo Hotels Kilimanjaro Limited versus The Treasurer Registrar (being the**

Legal Successor to PSRC) and Another, Civil Application No. 502 of 2020 (all unreported).

In the latter case, the Court of Appeal of Tanzania in regard to the point of illegality had the following comment.

"According to this decision, where there is allegation of illegality of the decision being challenged, the point of law should be of sufficient importance to constitute good cause within Rule 10 of the Rules."

As much as I have grasped from the submissions of both Advocates, it is vividly clear that, despite the fact that the DLHT was informed of Mohamed Kaira who was the respondent being died before the application was heard and determined, still, it continued to hear and determine the matter in the applicant's favour (now respondent). In my view, when the respondent dies before the case is heard and determined the Administrator or Administratrix of the estate as the case may be, or a legal person representative of the deceased who is party to the case, must be joined to the case. The duty of joining the that Administrator or Administratrix of the estate as the case may be, or a legal person representative of the deceased party is vested to the plaintiff or applicant as the case may be, by amending the pleading to implead the said Administrator or Administratrix of the estate as the

case may be, or a legal person representative of the deceased party before continuing with the case. That duty cannot be shifted to a person who is not a party to the case or who is the potential respondent.

The court of Appeal of Tanzania in the case of **Said Ibrahim (Legal Personal Representative of Ibrahim Ramadhan versus Melembuki Kitasho**, Civil Application No. 5 of 2014 when interpreting rule 57(3) of its Rules observed that:

*"A civil application shall not abate on the death of the applicant or the respondent but the Court shall, **on the application of any interested person, course the legal representative of the deceased to be made a part in place of the deceased.**" (Emphasis added)*

In the instant case it is obvious that, it is the respondent herein who had interests on the matter than the applicant. In a situation like this, it is the expectation of this Court that, he was the one required to apply for joining the applicant than the position the applicant stands for.

Without discussing at length something which could be dealt with in the intended revision, in my considered opinion the act of the DLHT of changing its order of who should amend the application in order to join the then respondent's legal representative to the then application from the then applicant to the respondent was in contravention of the law.

Not only that it was in violation of the said substantive law, but even the procedural law basing on the doctrine of *functus officio* which in effect bars the court or tribunal from entertaining the matter which the said tribunal or court has previously decided. In this case, the facts are so clear and it has not been disputed that, the said tribunal on 18 November 2021 and on 28th March 2022 ordered the respondent, who was the applicant in the original suit to amend the application and join the legal representative. It is also a fact that, on 26th May 2022 the DLHT, without taking into regard its previous order directing the applicant to amend the application No. 28 of 2018 to include the Administratrix of the estate of the then respondent. In my view, a decision which ignored a previous order to amend the application deprived the respondent therein the right to be heard, a principle of natural justice as enshrined in our constitution thereby constituting illegality.

In my view, these two points, are of sufficient importance and are apparent on the face of record to the extent of constituting good and sufficient cause to empower this court exercise its discretionary mandate to extent the time sought. These two ground alone suffices to dispose of this application. In the circumstances therefore, this application has

merits, it is granted, in consequence thereof, I hereby grant 30 days from today the day of delivery of the ruling for the applicant to file the application for revision of the impugned DLHT decision. The costs to be shouldered by the respondent.

It is accordingly ordered.

DATED at ARUSHA on this 18th day of November 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA

JUDGE