IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 20 OF 2022

(Originating from the District Land and Housing Tribunal for Manyara at Babati, Application No. 19 of 2016)

GABRIEL ANDREW MICHAEL ..... APPLICANT

VERSUS

DAMIANO AMA..... 1ST RESPONDENT

GURUMBE AXWESSO (As administrator of the Estate of the late Qamara Ami Qalago) ..... 2ND RESPONDENT

RULING

17/10/2022 & 30/11/2022

KAMUZORA, J.

The Applicant preferred this application under Section 14 of the Law of Limitation Act, Cap. 89 [R.E 2019] and any other enabling provision of the law, praying for extension of time to file an application for revision in this Court against the decision of the District Land and Housing Tribunal for Manyara (henceforth the trial tribunal), in Application No. 19 of 2016 delivered on 24/01/2018. The Application is supported by affidavit of the

Applicant. The 1st Respondent contested the application in a counter affidavit deponed by himself while the 2nd Respondent filed counter affidavit supporting the application.

On 11/07/2022 when the matter came up for hearing, it was agreed that hearing of the application be disposed of through written submissions. At the hearing of the application, the Applicant was represented by Mr. Erick Erasmus Mbeya, learned advocate, the 1st Respondent was represented by Mr. Joseph Mosses Oleshangay, learned advocate from Legal and Human Rights Centre while the 2nd Respondent appeared in person, unrepresented.

Before delving into what was argued, it is imperative that I recount the facts of the case leading to this application, albeit briefly. The Applicant claimed to have bought a piece of land measuring 4.2 acres located at Robanga hamlet, Dirma Village in Hanang' District within Manyara Region (henceforth the suit land), from Qamara Ami Qalago *alias* Qamara Ammi on 12/01/2016. He was in peaceful occupation of the suit land until July, 2019 when the 1st Respondent confronted him with an order of the tribunal declaring the latter the lawful owner of the suit land. That is when the Applicant became aware that the 1st Respondent had instituted Application No. 19 of 2016 in the trial tribunal against Qamara Ami seeking to be

declared the lawful owner of the suit land. However, the matter was heard ex-parte against Qamara Ami and the Applicant was not made a party to that case. The decision in respect of that application was delivered on 24/01/2018 declaring the 1st Respondent the lawful owner of the suit land. The 1st Respondent filed application for execution and ruling was delivered on 23/05/2019 appointing the court broker to execute the tribunal order.

During pendency of the application for execution, Qamara Ami Qalago died. The 2nd Respondent was appointed as the administrator of the deceased's estate. The record shows that as soon as the Applicant became aware of the tribunal decision, he instituted Application No. 44 of 2019 in the same trial tribunal establishing his interest on the suit land. Noting that it was not the proper avenue for him rather he ought to have filed application for revision in this Court, he prayed to withdraw the application. The application was withdrawn on 03/01/2022 and since the Applicant was out of time to file application for revision in this Court, he preferred this application urging the Court to extend time for him to file application for revision.

Mr. Mbeya prayed to adopt the affidavit in support of the application to form part of his submission. He contended that the Applicant has interest

over the suit land which was the subject matter in both Application No. 19 of 2016 and Misc. Application No. 82 of 2018. That, the Applicant claims to be the legal owner of the disputed land as deponed under paragraphs 2, 4, 5, 6 and 7 of the affidavit in support of the application. He submitted also that the late Qamara Ami no longer had interest over the suit land since his interest was transferred to the Applicant. It was his further submission that the Applicant was not made aware of existence of both applications as he was neither notified nor made a party. According to counsel for the Applicant, the Applicant became aware of existence of the applications in July, 2019 when the 1st Respondent was in the process of executing the tribunal order. He insisted that since the Applicant was not a party in Application No. 19 of 2016 and Misc. Application No. 82 of 2018, the remedy available to him is to apply for revision in this Court in order to challenge the impugned decision. To support such assertion, the learned counsel referred this Court to myriad of Court of Appeal decisions including: **Amani Mashaka (applying as the Administrator of the estate of Mwamvita Ahmed deceased) vs Mazoea Amani Mashaka & 2 Others,** Civil Application No. 124 of 2015, **Mgeni Self vs Mohamed Yahaya Khalifani,** Civil Application No. 104 of 2008, **The Attorney General vs Tanzania Ports Authority & 2 Others,**

Civil Application No. 87 of 2016 and **Mufindi Paper Mills Limited vs Ibatu Village Council & 3 Others,** Civil Application No. 532/17 of 2017 (all unreported).

Another ground pointed out by the Applicant's counsel is existence of illegalities in the impugned decision. He asserted that there was no proof whether the late Qamara Ami was aware of existence of the two applications. He added that in the pendency of Misc. Application No. 82 of 2018, Qamara Ami died on 14/05/2019. He fortified that the existence of illegality in the impugned decision constitutes sufficient cause for extending time making reference to the following decisions; **VIP Engineering & Marketing Limited & 2 Others vs Citibank Tanzania Limited,** Consolidated References no. 6, 7 and 8 of 2006 (unreported), **The Attorney General vs Tanzania Ports Authority & 2 Others** (supra), **Principal Secretary, Ministry of Defence; National Service v Devram P. Valambhia** [1992] TLR 185 and **Kalunga and Company Advocates vs National Bank of Commerce Limited** [2006] TLR 235.

Mr. Mbeya added that since the applications proceeded ex-parte, the Applicant was denied the right to be heard bearing in mind that his interest on the suit land was being determined. Denial of the right to be heard

according to the learned advocate contravened Article 13(a) of the United Republic of Tanzania Constitution. He referred this Court to the following decisions: **Fredrick Selenge & Another Vs. Masele** [1985] TLR 99 and **Mohamed Jawad Mrouch Vs. Minister of Home affairs** [1996] TLR 9.

According to Mr. Mbeya, the counter affidavits seemed not to challenge the application. He was of the view that the Applicant was not idle, he was prompt in preferring this application. that, as soon as the Applicant became aware of existence of Application No. 19 of 2016 and Misc. Application No. 82 of 2018 in July 2019, he instituted Application No. 44 of 2019 in the trial tribunal seeking to establish his right on the suit land. That, after he noted that it was not appropriate, he prayed for withdrawal of the same on 03/01/2022 paving way for this application. It was counsel's view that if this application is granted, the Respondents will not be prejudiced. He therefore prayed this Court to exercise its discretionary powers and allow the application while costs be in the due course.

Resisting the application, Mr. Oleshangay at the outset prayed to adopt the counter affidavit of the 1st Respondent to form part of his submission. While conceding to the position that an Applicant who was not a party in the proceedings may file application for revision in challenging the impugned

decision, he attacked the submission by the Applicant's counsel stating that the Applicant failed to account for the period of delay. It was counsel's further submission that the Applicant delayed to file his intended application for revision for a period of two and half years since he became aware of existence of the applications in July, 2019. While admitting that it is the discretion of the Court to extend time to do an act which ought to have been done in time, he insisted that such discretion must be exercised judiciously. He made reference to the following cases; **Mahamudi Ally Vs. Oliver Daniel (Administrator of the Estate of the late Daniel Manywili),** Misc. Civil Application No. 96 of 2021 and **Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010 (both unreported).

It was Mr. Oleshangay's submission that the parameters set out in **Lyamuya Construction Company Limited** (supra) were not met by the Applicant as the Applicant has not accounted for each day of the delay. He added that the delay of more than two years was inordinate, therefore the Applicant has not shown diligence he proved apathy, negligent and slopy in prosecution of the case. He added that the argument by the Applicant that

the delay was due to Application No. 44 of 2019 which was filed in the trial tribunal in counsel's view does not constitute sufficient cause. Also, that, the fact that Application No. 19 of 2016 proceeded ex-parte against Qamara Ami does not amount to illegality to constitute sufficient cause. It was counsel's view that when Application No. 19 of 2016 was instituted, the Applicant had no interest in the suit land making him necessary party in the proceedings. He made that observation because the sale agreement relied upon by the Applicant to establish his interest in the suit land shows that it was made on 12/01/2016 but it was signed by the magistrate on 27/03/2017 making it unreliable document. Mr. Oleshangay insisted that the application is abuse of Court process hence the same be dismissed without order as to costs.

On his part, the 2nd Respondent fully supported the application insisting that the Applicant is the lawful owner of the suit land.

After a thorough consideration of the respective affidavits by the parties and the written submissions by the counsel for both parties, it is pertinent that I consider whether the delay in filing this application was necessitated by sufficient cause. I need to state at the outset that sufficient ground for the delay is *conditio sine qua non* for the extension of time meaning, a condition without which not; a necessary condition. The Court of

Appeal decision in **Lyamuya Construction Company Limited vs Board of Trustees of Young Women's Christian Association of Tanzania,** (supra) is instructive in this respect. It was *inter alia* held:

> *"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:*
>
> *a) The Applicant must account for all the period of delay;*
>
> *b) The delay should not be inordinate;*
>
> *c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
>
> *d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

In the case of **Athumani Amiri Vs. Hamza Amiri & Another**, Civil Application No. 133/02/2018 (unreported), the Court of Appeal said the following on what amounts to good cause:

> *"It may not be possible to lay down an invariable or constant definition of the phrase "good cause" so as to guide the exercise of the Court's discretion under Rule 10, but the Court invariably considers factors such as the length of the delay, the reasons for the delay, the degree of*

prejudice the Respondent stands to suffer if time is extended, whether the Applicant was diligent, whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged..."

In the application under scrutiny, the question is whether the Applicants' application can be sufficiently covered by the "good cause" circumstances above explained. Extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. In both the affidavit and submission in support of the application, the Applicant's counsel put forth seven reasons why his application should be granted.

The Applicant's counsel contended that the Applicant has interest over the suit land hence he ought to have been joined in Application No. 19 of 2016 and Misc. Application No. 82 of 2018. He added that he was not aware of the existence of the said applications, until July, 2019 when the 1st Respondent was in the process of executing the order of the tribunal. This fact was not disputed by any of the Respondents. Therefore, it is undisputed fact that the Applicant became aware of the existence of the Applications in July, 2019.

It was Applicant's counsel further submission that as soon as he became aware, the Applicant did not stay idle. He promptly instituted

Application No. 44 of 2019 against the 1st Respondent which was later withdrawn after noting that it was not the proper remedy. After withdrawing the application in the trial tribunal, the record shows that the Applicant filed this application on 17/02/2022, which is a month later. In the first place, I agree with the Applicant's counsel that the Applicant did not stay idle after becoming aware of the existence of the applications. He promptly reacted by instituting Application No. 44 of 2019 so as to establish his ownership of the suit land, only that the Application was withdrawn on technical grounds. The contention by the 1st Respondent's counsel that the delay was of two and half years is not backed up with evidence.

Also, his submission that existence of Application No. 44 of 2019 does not amount to sufficient cause, is without prejudice, unfounded. It suffices to say that the Applicant appears to have been diligent in pursuit of what he believes to be his rights despite the obstacles he encountered enroute to that goal. This ground for delay is what we refer to in law as technical delay which has been held to be sufficient ground for extension of time. In this respect, I am guided by the decision in the case of **Fortunatus Masha Vs. William Shija and Another** [1997] TLR 154, where the Court held:

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the Applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

Despite the fact that the Applicant did not account for the period between 04/01/2022 when Application No. 44 of 2019 was withdrawn in the trial tribunal and 16/02/2022 when the instant application was filed, for the interest of justice and reasons to be unveiled in deliberation of the subsequent ground advanced by the Applicant, I find that period excusable.

Another ground submitted by Mr. Mbeya is existence of illegality in the decision intended to be challenged. He pointed out denial of the Applicant's right to be heard as one of the glaring illegalities in the proceedings and the impugned decision. It is apparent on record that the Applicant claimed to have interest in the suit land as he bought the same from the late Qamara Ami Qalago. He annexed the sale agreement to support his stance. That was also admitted by the 2nd Respondent. It is also apparent that the Applicant was not party in both Application No. 19 of 2016 and Misc. Application No.

82 of 2018, where ownership of the suit land was determined. As the Applicant claim to have interest over the suit land, justice requires him to be heard on his interest over the land. It is crystal clear from the above set of facts that the Applicant's right was determined without according him right to be heard. The argument by the 1st Respondent's counsel that the sale agreement relied upon by the Applicant should be assessed by this court to ascertain its illegality is unfounded. That cannot be addressed in an application for extension of time. What this court is obliged to do at this stage is to ascertain if there is reasonable ground to grant extension of time. As there is issue of ownership over the suit land and the denial of the right to be heard which is so basic, I find this circumstance fit for grant of extension of time. There are myriad of Court of Appeal decisions on the right to be heard. See; **Abbas Sherally and Another Vs. Abdul Sultan Haji Mohamed Fazalboy**, Civil Application No. 33 of 2002, **Margwe Erro and 2 Others Vs. Moshi Bahalulu**, Civil Appeal No. 111 of 2011 (both unreported) and **Mbeya-Rukwa Auto Parts and Transport Ltd Vs. Jestina George Mwakyoma** [2004] TLR 251.

In the case of **Shaibu Salim Hoza Vs. Helena Mhacha (as a legal Representative of Amerina Mhacha (Deceased)**, Civil Appeal No. 7 of

2012 (unreported), the Court of Appeal made the following observation on the effect of denial of a party right to be heard:

> *"With these facts, in our view, the joining of Dar es Salaam City Council in the suit would be necessary to enable the trial court to effectually and completely adjudicate upon the issue raised in the suit regarding the actual and real owner of the suit land.* ***Above all, it would have afforded, Dar es salaam City Council an opportunity of being heard. To do so, would be in conformity with the principles of natural justice i.e. according an opportunity to a party to be heard in a matter which directly affects the party."*** (Emphasis added)

I therefore agree with the Applicant's counsel that failure to accord the Applicant the constitutional right to be heard amounts to point of law of sufficient importance to be determined in the intended application for revision. That constitutes illegality in the impugned decision. It is trite law that illegality constitutes sufficient cause for the delay. In the case of **Constantine Victor John vs Muhimbili National Hospital**, Civil Application No. 214/18 of 2020 (unreported), it was held:

> *"In* ***VIP Engineering and Marketing Limited*** *(supra), for instance, the Court had the view that where a point of law at issue is the* ***illegality of the impugned decision that is of sufficient***

importance, it constitutes good cause for extending time."
(Emphasis added)

Since the Applicant was not made party in the applications in the trial tribunal and since his interest in the suit land was determined in those applications, that amounts to illegality to be resolved in the intended application for revision. It is my view that the Applicant is covered by the parameters set out in **Lyamuya Construction** (supra), entitling him the order sought in this application. Therefore, the Applicant has managed to advance sufficient reasons for grant of extension of time in filing application for revision in this Court.

Consequently, I allow the application and order that the Applicant to file the intended application for revision in this Court within 30 (thirty) days from the date of this ruling. Each party to bear their own costs for this application.

Order accordingly,

DATED at **ARUSHA** this 30th day of November, 2022

D. C KAMUZORA

JUDGE