

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

TANGA DISTRICT REGISTRY

AT TANGA

MISC LAND APPLICATION NO 55 OF 2020

(Arising from Misc. Application No 74 of 2017 of the District Land and Housing Tribunal for
Kilindi at Kilindi and Land Dispute No 14 of 2015 of Kiliwa Ward Tribunal)

HABIBU SAID.....APPLICANT

VERSUS

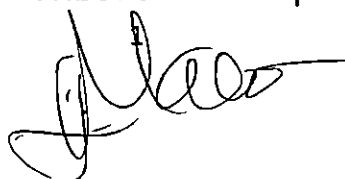
JACOBO VICENTRESPONDENT

RULING

MANSOOR J

This is an application for extension of time within which the Applicant Habibu Said, can file a revision out of time against the decision made in Land Application No. 74 of 2017 of the District Land and Housing Tribunal for Kilindi.

The Applicant in this application was the Respondent in the above-named matter which was an application for execution before the Tribunal. The applicant herein alleges that the Ruling of the District Land and Housing Tribunal was pronounced on 22nd May



2018 in his absence. In that application, the application for execution of the orders in Land Case No 14 of 2015 from Kilwa Ward Tribunal was granted. This application at hand was presented for filing on 08/09/2020 which is 840 days after the application for execution was granted by the District Land and Housing Tribunal.

According to the chamber summons filed by the applicant through Mr. Justus Ilyarugo, learned advocate, this application is made under Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019 read together with Section 52(2) of the Land Disputes Courts Act, Cap 216 R.E 2019. The former Section provides that; -

14 (1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

Section 52(2) of the Land Disputes Courts Act, Cap 216 R.E 2019, provides:

52 (2) The Law of Limitation Act shall apply to proceedings in the District Land and Housing Tribunal and the High Court in the exercise of their respective original jurisdiction.

Together with the chamber summons, this application is, as the law requires, supported by an affidavit sworn by Mr. Justus J Ilyarugo learned counsel for the applicant. The respondent filed a counter affidavit sworn by advocate Thomas Emmanuel Kitundu, also learned counsel. This matter was heard by way of written submissions.

The Applicant asserts in his supporting affidavit that he was the respondent in the matter between these same parties at Kilwa Ward Tribunal and in it, he raised an objection regarding jurisdiction of the tribunal as the land was located at Msanja Ward and not Kilwa Ward. Having raised that, the proceedings at the tribunal were stayed pending determination of the location of the

suit land. Wonderful enough, the tribunal reconvened without his knowledge and proceeded to decide the matter in the respondent's favor without his knowledge. Since he was not aware of the decision of the ward tribunal, he never appealed against it.

To his surprise, in 2018 he was informed by his neighbor that his name was being called at the District Land and Housing Tribunal. He followed up and learnt that there was an application for execution of an order emanating from Land Dispute No 14 of 2015 of Kilwa Ward Tribunal. He promptly lodged two applications at the District Land and Housing Tribunal of Kilindi at Kilindi, one to Stay Execution proceedings and another was an application for extension of time to set aside the ex parte decision by the Ward Tribunal of Kilwa. These applications were both filed on 12th April 2018. Nevertheless, the tribunal on 22nd May 2018 granted the application for execution making all the applicant's efforts nugatory.

The applicant further avers under paragraph 10 of his affidavit that in June 2018 is when he learnt that the application for execution was granted. During that same period, his father got sick

and subsequently passed away in August 2018. In September 2018 he filed an application for extension of time to file appeal in this court vide Misc. Land Application No 73 of 2018 but it was struck out on 1st September 2020 for technical reasons. As hinted earlier, this application at hand was filed on 08th September 2020, seven days after the first application was struck out for competence.

The respondent on his side, stands totally against this application giving reasons that since the decision at the ward tribunal is alleged to have been determined exparte then the remedy would have been to apply for extension of time to set that order aside and not to seek for extension of time to file revision. He cited two unreported persuasive cases but did not supply the court with its copies. The learned counsel kept submitting about the importance of providing the court with sufficient cause for each day of delay as required in applications for extension of time. He further stated that it is not true that the applicant was not aware of proceedings in the District Land and Housing Tribunal but he intentionally decided not to follow up.

This court has put all the submissions brought forward by learned counsels under a thorough observation. In this application, the applicant greatly complains of not being awarded with opportunity to be heard during the execution proceedings at Kilindi District Land and Housing Tribunal. As luck would have it, the District Land and Housing Tribunal proceedings are attached with this file and it is not true that the applicant herein was not aware of the ongoing execution proceedings against him. His presence can be spotted from the second date of proceedings that is on 25th January 2018 when he was present in person. On the next days he appeared through his advocate one Mr. Mhina. This advocate on 23/03/2018 raised an objection against the execution. The chairman ordered that the objection be argued by way of written submissions. The applicant who was the judgment debtor, and one who raised the objection, never filed any submission in support of his objection and thus execution was subsequently granted on 22nd May 2018.

I have taken liberty to narrate what transpired in the lower tribunal according to the record available so that the applicant

cannot simply mislead this court by stating that he was not availed with the right to be heard during execution proceedings.

It is however well noted that on 12th April 2018 before the execution order was granted, the applicant herein filed in the tribunal two applications, one for extension of time to set aside an ex parte decision by Kilwa Ward Tribunal and the second for Stay of Execution. Copies of such applications sealed with the tribunal stamp to ascertain that they were filed therein are annexed to his affidavit as part of annexure H-1 collectively.

The District Land and Housing Tribunals are guided by the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003. (GN. no 174 of 2003). Regulation 25 (1) and (2) of the same provides; -

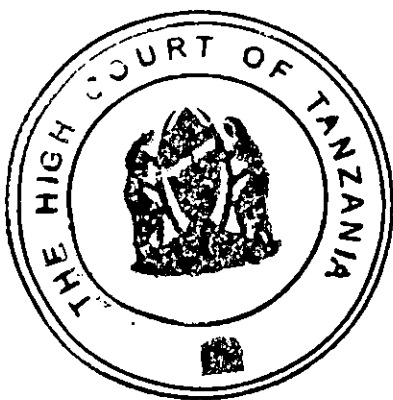
- 1. Notwithstanding regulation 24, a judgment debtor who intends to appeal to the High Court (Land Division) may, at any time before an order or decree of the tribunal is executed, apply to the tribunal for stay of execution.*

2. *The chairman shall immediately after receiving an application for stay of execution under sub-regulation (1) require all parties to appear before the tribunal for hearing and determination of the application for stay of execution.*

It is on record that the applicant participated in the execution proceedings, he was given a chance to argue his preliminary objections but by lack of diligence, he neglected to file the submissions as ordered by the tribunal. Such circumstance cannot be condoned by this court, and thus it is not an excusable reason to grant the extension for doing what he failed to do in the first place.

In the circumstances, I find no merit in the application, a therefore the application is dismissed with costs.

DATED AND DELIVERED AT TANGA THIS 11TH DAY OF APRIL, 2022




LATIFA MANSOOR

JUDGE

11TH APRIL, 2022