

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(MOROGORO DISTRICT REGISTRY)  
AT MOROGORO**

**MISC. LAND APPLICATION NO. 01 OF 2022**

*(Arising from the Ruling of the District Land and Housing Tribunal Misc. Application No. 214 of 2016 delivered on 11/5/2021)*

**EDSON SAMWEL KAHAMBA ..... 1<sup>ST</sup> APPLICANT**

**JUMANNE JUMAA .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REGISTERED TRUSTEES OF THE APOSTOLIC LIFE**

**COMMUNITY OF PRIESTS IN THE OPUS SPURITUS SANCTI  
(ALCP/OSS) .....1<sup>ST</sup> RESPONDENT**

**TRETEM NETWORK SCHOOL .....2<sup>ND</sup> RESPONDENT**

**RULING**

*Hearing date on: 17/3/2022*

*Ruling date on: 30/3/2022*

**NGWEMBE, J:**

The applicants Edson Samwel Kahamba and Jumanne Jumaa are in this court seeking extension of time upon which, they can lodge an application for Revision against the decision of the District Land and Housing Tribunal delivered on 11<sup>th</sup> May, 2021. The application is supported by a joint affidavit of the two applicants.



In turn the application was met by counter affidavits from both Respondents contenting that such application should not be granted as prayed. Upon completion of pleadings, this court invited both parties to address the court, whereby both procured services of learned advocates. The Applicants were represented by learned counsel Samwel Alfonse Banzi. The 1<sup>st</sup> Respondent was represented by learned advocate B. Tarimo, while Ignas Punge represented the 2<sup>nd</sup> Respondent.

Arguing in favour of the application, Mr. Banzi stressed that the decision of the Tribunal offended both the principle statute and its regulations. Insisted that the 2<sup>nd</sup> Respondent was granted right of occupancy of plot No. 477 of Block A. Tungi area within Morogoro Municipality. As such the 2<sup>nd</sup> Respondent instituted an execution application before the Tribunal. In that application the Applicants were not involved, thus triggered this application for extension of time to file revision against the impugned decision of that Tribunal.

Argued that, failure to grant this application will render the Applicants to suffer irreparably, thus, asked this court to grant the orders sought in the chamber summons.

In turn the learned advocate B. Tarimo commenced his submission by pointing out relevant legal positions governing extension of time, that extension of time is purely court's discretion upon being properly moved by sufficient cause and upon accounting for days of delay. Re-caped the date of decision by the Tribunal, that was 11/5/2021, but this application was instituted in this court on 4<sup>th</sup> January, 2022. However, disregarded the



contents of the affidavit in support to the chamber summons as disclosing no relevant ground or reason for such long delay. Paragraph 13 of the affidavit alleged illegality and serious irregularity without disclosing those illegalities and irregularities. Moreover, pointed out that the decision of the Tribunal was executing the decision of the High Court, which to date remain unchallenged. Rested by insisting that this application is purely an abuse to the court process. Thus, the application should be dismissed with costs.

Mr. Ignas Punge supported the submission in chief of Mr. B. Tarimo and added by referring this court to the ruling in **Misc. Application No. 139 of 2018 between Mwanza Saccos Ltd Vs. Dorotea Robert** and in **Criminal Application No. 76/04 of 2019 between Cosmas Faustine Vs. The Republic**. Concluded by arguing that whoever seeks protection by the law must demonstrate diligence otherwise, the court will not be in his/her favour. Rested by praying for dismissal of the application with costs.

In rejoinder the learned advocate reiterated to the submission in chief and proceeded to rejoin that the deed of settlement did not include the applicants, thus was illegal and irregular which requires to be corrected by superior court. Rested by asking this court to grant all prayers in the chamber summons.

It has never stopped surprising me whenever I sit to determine disputes in a court of law. This application is among them, which has greatly contributed to my surprise. The surprise is born out of the difficulties to



underscore the gist of the applicants and their advocate, coming to this court, seeking an extension of time with a view to file Revision against an execution order. Both parties are well conversant to the judgement of this court made by Madame Judge R. Mkuye (as she then was) in year 2015, whereby she conclusively determined the rights and ownership of the suit land. That judgement has never been appealed against, thus still alive and kicking. How could a loser seek extension of time to challenge its execution while accepting defeat of the main case (appeal)?

To print clear picture of this application and why it has surprised me, briefly, parties in **Land Appeal No. 125 of 2014**, before judge Mkuye were **Tretem Network Schools Vs. Samwel Edson Kahamba & 2 others**, meaning the applicants in this matter were Respondents in that appeal, while the 2<sup>nd</sup> Respondent herein was the Appellant. Upon hearing both parties, the court conclusively held:-

*"I proceed to allow the appeal and quash the decision of the District Land and Housing Tribunal. I further order that the appellant is the lawful owner of the land in dispute; the appellant be paid Shs. 10,000,000/= as general damages; interest of 20% on the above amount from the date of filling the suit to the date of judgement; interest at the rate of 7% from the date of judgement to the date of full payment; and costs of the suit"*

The judgement was not appealed against to date, thus the winner is declared the owner of that piece of land against the whole World and against whoever comes thereafter (Judgement in Rem).



Since the decree holder was declared by this court as the lawful owner of the suit land, proceeded to lodge an application for Execution No. 31 of 2016 before the District Land and Housing Tribunal. Despite being encountered by several applications for stay of execution and objection proceedings, yet at the end on 11/5/2021, the execution was conclusively made by the Tribunal and closed. For clarity, the objector to the execution proceedings was the 1<sup>st</sup> Respondent in this application, who was not a party to the Land Appeal No. 125 of 2014. However, in the course of hearing that objection, the objector (1<sup>st</sup> Respondent herein) and the 2<sup>nd</sup> Respondent, (the Decree holder), agreed and settled their differences amicably. Hence the execution was made in accordance to their deed of settlement.

Now the applicants who are the judgement debtor in Land Appeal No. 125 of 2014 are fully armed with their advocate Samwel Alfonse Banzi, are in this court seeking an extension of time with a view to challenge the consent execution made by the Tribunal.

Repeatedly, the purpose of enacting the Law of Limitation Act Cap 89 R.E 2019 traces back to the Latin principle of *interest Reipublicae ut sit Finis Litium* meaning it is for the interest of the Republic that there should be an end to litigation. In fact, every dispute must have an end to allow the winner/deed holder to enjoy the fruits of his struggle in the corridors of justice and the looser to take another course. To preserve this principle, the Legislature enacted the Law of Limitation Act. Once you are caught in the web of time limitation, unless you have sufficient cause/reason for that delay, otherwise the law of limitation is merciless.

In simple terms, time limitation is an essential element in every adjudication of disputes. The Court of Appeal in the case of **Night Support (T) LTD Vs. Benedict Komba, Revision No. 254 of 2008** held:-

*"Limitation is material point in the speedily administration of justice. Limitation is there to ensure that a party does not come to court as when he chooses".*

In similar vein, the Court of Appeal repeated in the case of **Henry Muyaga Vs. TTCL, Application No. 8 of 2011**, held:-

*"The discretion of the Court to extend time under rule 10 is unfettered, but it has also been held that, in considering an application under the rule, the courts may take into consideration, such factors as, the **length of delay**, the **reason for the delay**, the **chance of success of the intended appeal**, and the **degree of prejudice** that the applicant may suffer if the application is not granted"*  
*(Emphasis in mine).*

When delay is caused by good cause or illegality of the impugned judgement is observed, and upon sufficient cause, extension of time may be granted. In fact, extension of time is a discretionary power of the court upon being satisfied that indeed the applicant (s) was prevented by sufficient cause.

In respect to this application, the applicants are seeking extension of time to apply for Revision against an execution order made by the District Land



and Housing Tribunal dated on 11/5/2021. This application was instituted in this court on 5<sup>th</sup> January, 2022, equal to eight months from the date of decision. The question is whether such delay of eight months was caused by sufficient reason? Even if the application is granted the question is, whether there is any chance of success of the intended Revision, and lastly whether the applicants will be prejudiced if the application is not granted? To the best of my recollection, the answers to these questions are in negative. The applicants have nothing to suffer and in fact there are no prejudice at all, because they were satisfied with the defeat arrived by this court in Land Appeal No. 125 of 2014.

Certain principles related to extension of time are settled in our jurisdiction, among them is related to exoneration of the applicant from being a source of delay. Always the best reason for delay should exonerate the applicants that they are not the source of delay. Unfortunate may be for the applicants, they have failed to account for such long delays of eight months. The Court of Appeal in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo, civil Appalication No. 3 of 2007** had similar holding when they held:-

*"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing period within which certain steps have to be taken"*

Such position traced back to the decision of Privy Council in **Ratnam Vs. Cumarasamy and Another [1964] 3 All ER 933** at page 935 where they observed: -

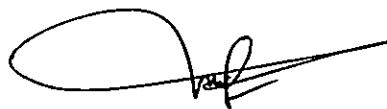
*"The rules of court must prima facie be obeyed and, in order to justify a court in extending time during which some step in procedure requires to be taken there must be some material on which the court can exercise its discretion. If the law were otherwise any party in breach would have an unqualified right to extension of time which would defeat the purpose of the rules which is to provide a timetable for the conduct of litigation".*

I am settled in my mind that this application defeats the purpose of time limitation and opens the door of endless litigation contrary to public policy and intention of litigation.

Since the applicants decided to sleep over their rights for all those months, and since they accepted defeat in Land Appeal No. 125 of 2014, and since the application is intended to challenge execution of the decree holder without challenging the judgement itself, obvious justice is not in their favour, rather justice demand them be left to continue sleeping forever and let the decree holder enjoy the fruits of justice. Accordingly, this application is dismissed with costs.

**I accordingly order.**

**Ruling** delivered in chambers this 30<sup>th</sup> day of March, 2022



**P.J. NGWEMBE**

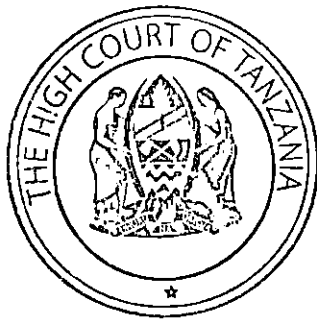
**JUDGE**

**30/03/2022**



**Court:** Ruling delivered in chambers on this 30<sup>th</sup> day of March, 2022 in the presence of Applicants, Ms. Lea Mwasa for B. Tarimo and Ignas Punge Advocate for 2<sup>nd</sup> Respondent.

**Right to appeal to the court of appeal explained.**



A handwritten signature in black ink, appearing to read "P.J. NGWEMBE", is written over the printed name.

**P.J. NGWEMBE**

**JUDGE**

**30/03/2022**