

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC LAND CASE APPEAL No. 73 OF 2020

*(C/F Appeal No. 66 of 2011 in the District Land and Housing Tribunal for Arusha
originating from Land Complaint No. 59 of 2011 from Terrat ward Tribunal)*

ELIZABETH LAZARO.....APPELLANT

VERSUS

NAIGISA SEVERWA.....RESPONDENT

RULING

7th March & 25th March 2022

MZUNA J.:

The above mentioned Applicant is seeking for extension of time to file revision against the decision of the District land and Housing tribunal for Arusha in Appeal No. 66 of 201.

The dispute centers on a claim for a piece of land measuring 26 meters width x 151 meters length which the applicant's late husband one Lazaro mortgaged it to Mzee Dakoro for Tshs 300/-. Her evidence was that her brother in law, the respondent herein paid a pledged money and therefore came into its possession on condition that it was to revert to the applicant's husband upon paying the pledged money to him. Unfortunately, he passed

away before paying same. The application is for extension of time to file revision against the decision of the District Land and Housing Tribunal for Arusha in Appeal No. 66 of 2011 (DLHT). The said DLHT adjudged in favour of the respondent that he acquired possession by the principle of adverse possession and prescription as opposed to the Ward Tribunal which decided in favour of the applicant that she should refund the respondent Tshs 300/-

Hearing of this revision application proceeded by way of written submissions. The applicant appeared in person unrepresented but was assisted by Legal and Human Rights center to prepare her submissions. There is there is an affidavit sworn by the applicant supporting the application. Similarly, the respondent who is ably represented by Mrs Aziza Shakale, the learned counsel, filed a counter affidavit opposing the application. The judgment which the applicant seeks revision was delivered on 12/12/2012.

The main issue is whether there is sufficient cause shown for the delay?

The reasons advanced by the applicant in her submission and affidavit being sickness and illegality. That, the Applicant being an Older Woman got

illness as a result she was admitted for medical treatment at Terrat Dispensary since 15th February, 2013. When she got relief, she decided to approach the Legal Aid clinic and on 23rd September 2020 she filed application for extension of time before this Honourable court.

That, the decision of Arusha District Land and Housing Tribunal was delivered on 12th December 2012, and that since the matter originated from Terrat ward Tribunal, the applicant ought to have preferred her appeal or revision to this court within sixty days which would have ended on 12th February 2013. To support the ground of sickness, the applicant attached medical report from Terrat medical clinic to support her argument. That, the delay to file the revision was caused by the applicant's sickness.

On the ground of illegality, she submitted that long occupation of someone's land does not guarantee a Person to own that land. That, there has been a misperception of the principle of adverse possession by the first Appellate tribunal. The Applicant cited the case of **Amina Maulid Ambali And 2 Others v. Ramadhani Juma**, Civil appeal No.23 of 2019, Court of Appeal of Tanzania (unreported) to emphasis a point that not always do the long period of staying in the suit premises entitle someone to ownership by virtual of an adverse possession.

In response, the respondent said that the delay by the applicant to file revision is of 7 solid years till now. He further stated that the medical report is vague and it has not disclosed that the applicant was hospitalized for the whole period of 7 years.

He also stated that, the continuation sheet attached to the medical report is blank. The learned counsel cited the case of **Mega Builders Ltd v. D.P.I Simba Limited**, Civil application No. 319/16 of 2020, CAT (unreported) where the court dismissed application for extension of time to file revision which was delayed for two years for failure of the applicant to show good cause.

In a rejoinder submission, the applicant reiterated her submission on chief and insisted that she was sick hence failed to apply for revision. That she was admitted at Terrat Dispensary since 15th February 2013 until when she got energy to approach legal aid clinic on 23rd September 2020 when she filed the present application.

The powers vested on this court to extend time is primarily discretionary powers. The question is, has the applicant moved the court to act? The application has been preferred under section 14 (1) of the Law of

Limitation Act [Cap 89 R.E 2002] (LLA). To move the court, there must be shown:

"any reasonable or sufficient cause" before court can extend "the period of limitation for the institution of an appeal or an application".

The alleged medical report (attached to the affidavit) shows that:-

"...the applicant attended their facility first on 15th February 2013 with the complain of severe headache, dizziness, talkativeness, loss of sleep, extreme happiness, heart beat ...general body malaise...After all assessment our client were (sic) suffering from SECONDARY HYPERTENSION and BIPOLAR MOOD DISORDER...She came for follow up every 2 day(sic) to monitor blood pressure and progress of mental health for four month(sic)"

Annexed therewith, is also a (continuation sheet) which is blank.

There are well established principles which court is guided when determining whether there is sufficient cause shown that may move the court to extend time as well stated in the case of **Tanesco vs. Mufungoleonard Majura And 15 Others**, Civil Application No. 94 of 2016, CAT at DSM (unreported) at page 10, the court cited with approval the case of **Lyamuya Construction Company Ltd Versus Board of**

Trustees of Young Women's Christians Association of Tanzania, Civil

Application No. 2 of 2010 where it was stated;

- a) The applicant must account for all the period of the delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,*
- 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.*

The above case demonstrates the need to account for all the period of delay and also that a delay should neither be inordinate nor should there be negligence. A delay of seven years, I would say, without accounting for every day of the delay is indeed inordinate and more seriously there was negligence and lack of diligence. The purported letter is not a medical report. It is vague as well argued by the respondent's counsel because it does not show or prove the fact that applicant had been sick since 2013 such that she could not attend court. Worse still, it is not stamped by a Doctor's seal instead it has the seal of Arusha City Council. Similarly, it is not signed by the Doctor. A mere letter, I am tempted to believe, cannot move this court

to act. The applicant has failed to account for the whole 7 years period of delay.

In a similar case of **Mega Builders Ltd v. D.P.I Simba Limited** (Supra) the court in dismissing an application for revision out of time held at page 9 hat:-

"In my considered observation in the current application that, the applicant's delay of more than two years is inordinate."

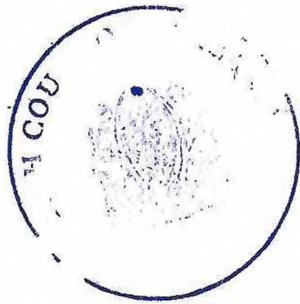
(Underscoring mine).

The above holding applies mutatis mutandis to the case under consideration. So, I rule out the alleged delay on grounds of illness.

I move to the ground of illegality. The position of the law is that it must be apparent on the face of the record not from long drawn arguments. The case of **Mega Builders Ltd v. D.P.I Simba Limited** (Supra) is also clear on this point. The applicant has capitalized on the principle of adverse possession as well as principle of prescription. In this case the respondent Naigiswa Severwa who is the brother in law of the applicant is the one who redeemed the land in dispute from one Mzee Dakoro for Tshs 300/=. He said redeemed it in 1966 while the applicant says it was in 1978. In any case,

whether possession was lawful or not is based on evidence not a ground of illegality as alleged.

That said, this application is devoid of merits. The application is hereby dismissed with no order as to costs because the matter is between blood relatives.



M. G. MZUNA,
JUDGE.
25/03/2022