

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

MISC. LAND CASE APPLICATION NO. 60 OF 2020

(C/F Land Appel No. 41 of 2015 In the High court, Arusha District Registry, Original from Application No. 35 of 2017 in the District Land and Housing Tribunal for Karatu)

ABUTWALIB SHOKO.....APPLICANT

Versus

JOHN LONG.....1ST RESPONDENT

EMMANUEL KIVUYO..... 2ND RESPONDENT

RULING

16th March & 8th April, 2022

MZUNA, J.:

This application has been filed by the above mentioned applicant seeking for enlargement of time to file an application for review of the judgment and decree of this Court vide Land Appeal No. 41 of 2015.

Initially, the application was against three respondents namely; John Long, Emmanuel Kivuyo and Albin Tarimo. However, in due course, Mr. Shedrack B. Mofulu, Learned Advocate for the applicant prayed to abandon the claim against Albin Tarimo who was the 3rd respondent for the reason as they have no further interest against him. That prayer was not objected by Mr. Patrick G.M. Maligana, Learned Advocate for the

advanced the reason of “error apparent on the face of record” as well as “technical delay”.

Submitting on the ground of technical delay, Mr. Mofulu contended that the applicant filed an application for execution No. 74 of 2018 in the District Land and Housing Tribunal (DLHT) for Karatu seeking for an execution requesting the Court broker be appointed to handover the land measuring 12 acres to the decree holders and demolish the structures thereto in order to pave way to the applicant to comfortably use the land. He said the application was rejected for the reason of introducing new order which was not given by the High Court.

From there, he further said, the applicant started going into various avenues in satisfying his right. Plethora of case laws to support the position was cited including the case of **Kalunga & Company Advocates Ltd vs. National Bank of Commerce Ltd** [2006] TLR 235, **John Tiliko Kisoka vs Aloyce Abdul Minja**, Civil Application No. 3 of 2008, **Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** (1992) TLR 182 and **Nicholous Mwaipyana vs The Registered Trustees of the Little Sisters of Jesus of Tanzania**, Civil Appeal No. 335/3 of 2019 (unreported).

"In Hassan Bushiri v. Latifa Lukin Mashayo, Civil Application No.3 of 2007 (unreported), the Court had an occasion to underline the dire need for litigants who seek to extend time in taking actions within which certain steps could be taken, to account for each and every day of delay in the following terms:

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

In the case at hand, as already alluded to above, the applicant has failed to explain away the delay of about fifteen days from 19.07.2017 when the Court struck out Civil Application No. 70/11 of 2017 to the lodgement of the present application."

Sloppiness and negligence cannot be blessed by the court of law in the name of extension of time. The provision of the law which limits proceedings of this nature is the Schedule to the Law of Limitation Act, [Cap. 89 RE 2019] Part III paragraph 21. This provision provides that the application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided by the law of limitation Act or any other written law the time for limitation shall be **sixty days**.

In the case of **Kalungi and Company Advocates v. National Bank of Commerce Limited** (supra) at page 239 while citing the case of **Ratnam Kumarasamy** [1965] 1 WLR 8 it was held that: -

been attempted to cover the anomaly which makes the ground as baseless.

Conclusion to that ground paves the way to next one which is error on the face of record. The guiding provision of the law in regard to review by this Court is section 78 read together with Order XLII both of the Civil Procedure Code, [Cap. 33 RE 2019] (CPC). The said Order XLII CPC Provides as hereunder;

1.-(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed,

*and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some **mistake or error apparent on the face of the record**, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order. (Emphasis Added)*

That provision clearly shows there must be an error apparent on the face of the record, failure of which the application is bound to fail.

Mr. Mofulu contended that he wants such extension because the judgment of the High Court despite of quashing and setting aside the

application for extension of time to file a review if he shows good cause for the delay which can either be an error apparent on the face of record or technicality among others. It was held in the case of **Citibank (Tanzania) Ltd vs. T.T.C.L. & Others**, Civil Application No. 97 of 2003, CAT (unreported), that:

"...a claim of illegality or otherwise of the challenged decision or order or in the proceedings leading to the decision."

(see also 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)

I find all above mentioned criteria missing as they have not been established. There is no point apparent on the face of the record that may move this court to review its decision let alone any sufficient cause for the delay for three years which has been advanced by the applicant. In the circumstances, the present application must fail.

That said and done, this application is devoid merit and is hereby dismissed with costs.

It is so ordered.



M. G. MZUNA,
JUDGE.
08/04/2022