

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

MISC. LAND APPLICATION NO. 15 OF 2021

(Arising from Application for execution No. 48 of 2019 from Morogoro District Land and Housing Tribunal)

FATUMA RASHIDI APPLICANT

VERSUS

PENDO STIVIN RESPONDENT

RULING

Hearing date on: 05/5/2022

Ruling date on: 10/5/2022

NGWEMBE, J:

This is an application for extension of time to apply for revision against the decision of the District Land and Housing Tribunal for Morogoro in execution No. 48 of 2019 which was delivered on 13th May, 2021. The applicant moved this court under section 14 (1) of the Law of Limitation Act Cap 89 R.E. 2019, read together with section 95 of CPC. Above all the application was supported by a detailed affidavit of the applicant Fatuma Rashidi.

Both parties procured services of learned advocates, while the applicant had a service of advocate Johnson Msangi from Kifumwa Law Advocates, the respondent is represented by Jackson Mashankara. The respondent under assistance of her advocate Jackson Mashankara, responded to the application by filing both Notice of Preliminary Objection and Counter affidavit. However, on the hearing date, the learned advocate orally raised two prayers; one to withdraw the notice of preliminary objection; and two not to oppose the application for extension of time. Therefore, this court, proceeded to grant both prayers, to withdraw the notice of preliminary objection and that the respondent does not intend to oppose the application, thus abandoned her counter affidavit.

Despite granting the two prayers to the respondent and that the application is unopposed, yet the applicant still had a long way to go before she could obtain extension of time. It is a legal requirement that, extension of time is purely discretionary powers of the court. However, such discretion is always exercised judiciously. In certain circumstances, such discretion may successfully be challenged by superior court. Having such basic principles in mind, I proceeded to invite the applicant to address the court accordingly.

The learned advocate Msangi argued generally, that the Tribunal delivered an execution order to demolish the compound of the applicant on 20/10/2021. However, the applicant was not aware on the existence of any application before the District Land Tribunal, seeking among others an execution of the Ward Tribunal's decision. Denied that the applicant was never served with summons to appear and show cause before the



execution order could be issued. As such the applicant was prejudiced with the whole exercise by the District Land Tribunal. Hence intends to challenge it by way of revision as was rightly held in the case of **General Tire (E.A) Ltd Vs. Amenyisa Macha and Others, Civil Appeal No. 21 of 2003.**

Rested with a prayer that, the application be granted. Since the respondent clearly disclosed that, she does not intend to oppose the application, this court, now proceed to determine the application on merits.

Upon perusal to the available records, it is evident that the disputants had a land dispute before Diogoya Ward Tribunal – Land case No. 77 of 2018. That on 06/12/2018, the Ward Tribunal decided in favour of the Respondent. Such decision was not appealed against, hence the respondent on 8th March, 2019 lodged an application for execution before the District Land Tribunal. Consequently, on 13/05/2021, the application for execution was granted and the Tribunal proceeded to appoint the court broker called Ivenico Auction Mart and Court Brokers to carry out such execution.

Based on the background of this application, it is evident that the applicant instituted this application on 8th December, 2021 while the ruling of the Tribunal was on 13/05/2021. The sole purpose of this application is for extension of time to lodge an application for revision against the execution order. Simple mathematics, indicates that, from the date of decision of the District Land Tribunal to the date of filing this application is equivalent to seven (7) months. Further it is on record that the court

broker implemented that order prior to filing this application and the Tribunal's file was already closed.

Moreover, I have noted that the applicant was happy with the decision of the Ward Tribunal, which was delivered on 06/12/2018. Such decision was subject to execution by the District Land and Housing Tribunal. Failure to appeal against the decision of the Ward Tribunal, logically, one cannot challenge its execution, unless the execution is carried out contrary to the Tribunal's award.

It is a trite law that, in order for the applicant to succeed in her application for extension of time, she has uncompromised duty to disclose convincing reasons for such long delay of seven months before this court may invoke its discretionary powers to grant or otherwise, extension of time. Obvious, as I have already stated, the court's discretionary powers are always exercised judiciously. Reasonable cause and sufficient reason must be disclosed prior to extension of time.

In this application the learned advocate for the applicant, labored much on complaining against the District Land Tribunal instead of disclosing reasons which hindered the applicant to apply for revision within time.

Perusing the affidavit in support to the chamber summons, the applicant lamented bitterly on failure of the respondent to serve her with summons to appear before the District Land Tribunal and show cause as to why execution should not be carried out. Also raised the issue of misrepresentation, perjury and illegalities without disclosing those



misrepresentations, perjury and illegalities. Usually illegality is a good cause for extension of time, but such allegation on illegalities must be apparent on the face of the record. Even misrepresentation and perjury are, in fact, criminal in nature, so in order for the court to take it as a ground for extension of time, they have manifestly, be seen on face of the record as opposed to legalistic interpretation.

Numerous decisions have been made by this court and the Court of Appeal that the court faced with an application like this, several factors must be considered, including length of delay, reasons for delay, chances of success and possible prejudice in case the extension is not granted (the list is not exhaustive). The Court of Appeal repeated same in the case of **Henry Muyaga Vs. TTCL, Application No. 8 of 2011**, where 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).

Another equally important is the duty of the court to protect a party who is diligent on his rights. Lack of diligence is not a ground for extension of time. This position was rightly held by the Court of Appeal in the case of

Dar es Salaam City Council Vs. Jayantilal P. Rajani, Civil Application No. 27 of 1987 held:-

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be considered, including whether or not the application has been brought promptly; the absence of any explanation for delay, lack of diligence on the part of the applicant"

Undoubtedly, time limitation is a material fact, which must be observed and strictly complied with. The Court of Appeal in **Civil Appeal No. 19 of 2016 Barclays Bank (T) Ltd Vs. Phylisianh Hussein Mcheni** at page 13 quoted the book of C.K. Takwani writes in Civil Procedure, with Limitation Act, 1963, 7th Edition, at page 782 observed:-

"Statutes of Limitation are based on two well-known legal maxims:

- (i) The interest of the State requires that there should be an end to litigation (**interest reipublicae ut sit finis litium**)*
- (ii) The law assists the vigilant and not one who sleeps over his rights (**Vigilantibus non dormientibus jura – subveniunt**)*

Much as I fully observe with critical minds those principles, yet I am not blind on exceptional circumstances upon which, time limitation may be extended. For instance, when the applicant's delay was caused by good cause; or the delay was caused by inaction of the court in providing necessary documents; or illegalities apparent on the face of record; or in any way the delay was not caused by the applicant; the list is not

exhaustive. In anyway, the good cause should exonerate the applicant from being the source of delay.

Since the applicant in this application has failed to account for such long delay of seven (7) months, this court under guidance of the decision of the Court of Appeal in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo, civil Appalication No. 3 of 2007** where 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"

This position traces its origin from the decision of Privy Council in **Ratnam Vs. Cumarasamy and Another [1964] 3 All ER 933** at page 935 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".

Having so said, the question remains, whether the applicant has disclosed good cause for such long delay and whether the applicant will be prejudiced if the extension time is not granted? To answer these questions,



I am certain, the applicant has failed to disclose any viable reason for that delay. Above all, the application becomes an academic exercise because the whole process of execution has already been completed and closed. Thus, no prejudice may be caused to the applicant.

In totality, this application is devoid of merits, same is dismissed with no order as to costs.

I accordingly order.

Ruling delivered in chambers this 10th day of May, 2022



P.J. NGWEMBE

JUDGE

10/5/2022

Court: Ruling delivered in chambers on this 10th day of May, 2022 in the presence of Mr. Jackson Mashankara for Msangi Advocate for the applicant and Jackson Mashankara Advocate for Respondent.

Right to appeal to the court of appeal explained.



P.J. NGWEMBE

JUDGE

10/5/2022