

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MISC. LAND APPLICATION NO. 14 OF 2021**

**SAULO J. SANGA AND 232 OTHERS..... APPLICANTS**

**VERSUS**

**THE REGISTERED TRUSTEES OF THE CATHOLIC**

**ARCHDIOCESE OF SONGEA..... RESPONDENT**

**RULING**

07.03.2022 & 14.03.2022

**U. E. Madeha, J.**

This is an application for an order of temporary injunction to restrain the Respondent, The Registered Trustees of the Catholic Archdiocese of Songea from evicting, disturbing, or otherwise working and doing anything inconsistent with the rights of quiet enjoyment and using the suit land.

Injunctive relief is sought pending the determination of Land Case No. 5 of 2021 before this Court. The application is by way of Chamber Summons supported by an affidavit sworn by Saulo J. Sanga on his and Two Hundred and Thirty-Two (232) Others behalf. The summons was issued in accordance with **Order XXXVII Rule 1 (a), Section 68(c) (e), and Section 95 of the Civil Procedure Code Cap 33 (R.E. 2019).**

Initially, the Applicants desired to have the matter heard ex-parte, on the other hand, the Court ruled that the application should be heard inter-partes. The Applicant and the Two Hundred and Thirty-Two (232) Others are claiming the piece of land from Chipunguni at Selekano Village within Liganga Ward at Songea District Council to be theirs.

The Respondent filed an application for execution, the case of the **Registered Trustees of the Catholic Archdiocese of Songea v. Agaton Duwe**, Civil Execution No. 6 of 2021 to evict the Applicants from the land which was assigned to the Deputy Registrar of this Court for the Execution of the decree arising from Land Case No. 1 of 2014. After realizing that the condition was not favorable in the street, the Applicants filed Land Case No. 5 of 2021 to determine the important issues of ownership of the disputed land. Thereafter, Land Case No. 5 of 2021 was registered. The Respondent attached the certificate of ownership of the land which is Title Deed No. 1431 Land Office No. 1182912, Plot No. 463 Block at Liganga. The supportive document (Title Deed) provided by the Respondent needs to be confirmed by the Court because it was obtained recently when Land Case No. 5 of 2021 between the Applicants and the Respondent which was already filed in this Court.

The Respondent has demarcated the said piece of land with beacons claiming that the same land belongs to him. He intended to demolish residential houses owned by the Applicant and the Two Hundred and Thirty-Two (232) Others. The applicants have been residing on that piece of land for more than twelve (12) good years free from any kind of disturbance. Furthermore, they have planted permanent crops including bananas. The intended suit has numerous people claiming the same interests against the Respondent as per Court order in Misc. Land Application No. 09 of 2021 of High Court Songea.

In this application, the Applicants were represented by Mr. Eliseus Ndunguru and Bernad Mapunda, the learned Advocates, who elaborated the grounds set out in the Chamber Summons and the affidavit. They prayed to the Court to grant a temporary injunction against the Respondent their agents and any person working in the capacity of the Applicants. The Applicant and his Two Hundred and Thirty-Two (232) Colleagues are not required to be evicted or disturbed on the land against their rights.

Moreover, the genesis of the prayer is the Land Case No. 5 of 2021 in which the Applicants and the Two Hundred and Thirty-Two (232) Others are the Plaintiffs and the Respondents is the Defendant. They were arguing over the

*same was registered as Misc. Labour Application No. 1 of 2020 of which the said application now was heard on merits and eventually on 17/07/2020 the court granted the application and leave to file Revision out of time was granted as prayed and the time frame was within 21 days.*

*9. That, having granted the leave the Applicants herein timely as ordered by the court filed an application for Revision and the same was registered as Revision No. 06 of 2020, but further the said application was also suffered from preliminary objection and eventually on 30/10/2020 the said application was struck out on the ground that affidavit of Bakari Ally falls short as it has no address of the person making the declaration.*

*10. That, being diligent to pursue the matter eventually the Applicants herein successfully managed to find another Advocate who will able to handle the matter competently and at the meantime another application for leave to file Revision out of Application No. 3 of 2020, but during the hearing of the said application the Court found that the said application to be incompetent and the same was struck*

*out and further to that leave to file other competent application was granted.*

11. *That, the Applicants have an overwhelming chance of success as the decision intend to challenge are encountered with fundamental irregularities on the face of law which need the intervention of this honorable Court inter alia being the trial Commission decided preliminary objection based on evidence and further the Commission decided the matter contrary to the law.*

12. *That failure to file an appeal on time is not in fault of the Applicants herein rather caused by factors that are beyond our control as all the time has been in the corridor of this honorable court from 2013 prosecuting our case to pursue our right. For the interest of justice, all that has been sought in the Chamber Summons be granted unless the Applicants will suffer irreparable loss.*

On the date when the application was brought for mentioning the Counsel for the Applicants prayed in this Court that the application to be heard by way of written submission. Due to the absence of any objection from the opposite party, this Court adhered to the Applicant's Counsel prayer. The Applicants were represented by Mr. Zuberi Mauridi the learned Advocate

Applicants saw that the case was at the execution stage, they filed Land Case No. 5 of 2021 in Court. After the final determination of Land Case No. 1 of 2014, there was no appeal or Revision application.

The counsel for the Respondent averred that there were no triable issues between the Applicants and the Respondent because the Applicants were unable to file an appeal after the decision of Land Case No. 1 of 2014. He also further stressed that according to Land Case No. 5 of 2021, the Applicant has not joined the Two Hundred and Thirty-Two (232) Colleagues. Hence, this would be tantamount to saying that you are forcing the donkey to pull the cart. The triable issues exist in a standing case supported by a stem. On points of triable issues, he considered the Court to deal with Land case No. 1 of 2014. He further averred that there are no triable issues but the Applicants want to bring with an eye to sympathize with the Court, that compassion cannot be seen. Considering the issue of balance of convenience, he argued that, when you weigh the scales on who has suffered the most in the disputed land allocated at Selekano Village, the answer is supposed to be the applicants, since the applicants are the ones who live in the conflict zone. The applicants have not attached the Title Deed to prove the issue of ownership. If there is no Title Deed there are no triable

issues as the land which the Applicants are talking about was the subject matter in the case which was delivered in 2014 and it is in the execution stage as per Execution Case No. 6 of 2021.

They think that all the Applicants are the agents of land case No. 1 of 2014. The Applicant and Others filed this application and Land Case No. 5 without reasoning. The Respondent had not been expelled from the land. He prayed that this application for the temporary injunction to be dismissed.

In rejoinder submission, Mr. Eliseus Ndunguru reiterated his submission in chief and added that the disputed area is at Selekano Village at Liganga Ward. The issue concerning the execution case is not supposed to be discussed because it is not listed in the paragraphs of the counter affidavit. Therefore, the Respondent's learned Counsel cannot add more arguments than what was contained in the counter-affidavit considering the fact that, the Respondent's learned Advocate is not a witness before the Court. The evidence concerning the execution case is unlawful and is supposed to be expunged. He prayed the Court to grant the order as requested.

I shall first have to deal with the issue of whether it is proper for the Court in the circumstances of the case to be moved to grant the order for temporary injunction. As just indicated by Mr. Eliseus Ndunguru, the learned

Additionally, the Arbitrator decided the preliminary objection based on evidence, Mr. Ndunguru averred that this is not a good cause for an extension of time, as the Arbitrator has a prime duty to ensure that justice is achieved at the earliest opportunity, no wrong was committed by the Arbitrator by calling evidence to prove the time limit of the complaint brought before the Commission of Mediation and Arbitration. He prayed that this application to be dismissed for want of merits.

Having carefully considered the written submission from the counsel for the parties, this Court has observed that the issue to be determined in this application is, whether the Applicants has adduced sufficient cause for the delay to file the revision out of time as prescribed by the law to warrant the Court so as to grant him an extension of time to file the same. The question is, what amount to sufficient cause for the delay to file a Revision in Court within the time frame? The answer to the above question can be found in the case of **CRDB (1996) Limited V. George Kilindu** Civil Application No. 162 of 2006, CAT at Dar-es-Salaam (Unreported) where it was stated *inter alia*: -

*"What amount to sufficient cause has not been defined but from cases decided by the Court it includes among others, bringing*



*the application promptly, valid explanation for the delay and lack of negligence on the part of the Applicant.”*

Starting with the factor of bringing the application promptly the Court has found that, as stated by the Applicant's Counsel the decision which the Applicants intends to challenge, if the extension of time will be granted was delivered on the 8<sup>th</sup> day of October, 2013. He applied for Revision within the time. Furthermore, they filed simultaneous applications but all were struck out due to technicalities.

The court has considered the above sequence of events. After going through the record of the matter it has found that, although the decision of the CMA was delivered on 8<sup>th</sup> October 2013 and certified on the same date the Applicants filed the applications which were struck out for technical factors, this shows that the Applicants were diligent and prompt to deal with their case.

I have examined closely at the previous applications and realized that the problems started when the Applicants applied for Revision No. 6 of 2020 which was struck out on 3.10.2020. The Applicants filed Misc. Labour Application No. 3 of 2021 was for the extension of time to be allowed to file

for Revision which was on 18.11.2021. They are therefore supposed to count for each day of delay from 3.10.2020 when Application No. 6. Of 2020 was struck out until 18.11.2021 when the Applicants applied for the extension of time so that they could file an appeal out of time. They have been wandering around the Court for about seven years from 2016 to 2022, and have not yet found their rights, this is the spirit of the wilderness.

The Applicants alleged that the trial Arbitrator decided the preliminary objection raised by the Respondent based on evidence and decided the matter contrary to the law, which was conceded by the Counsel for the Respondent who said that, it was Arbitrator's work to ensure justice was achieved at the earliest opportunity, no wrong was committed by the Arbitrator by calling the evidence to prove the time limit for the complaint to be brought to CMA.

Furthermore, it is a cardinal rule that the point of preliminary objection has to be based on a pure point of law and not otherwise. This was stated in many decisions of the Court, to mention the few, the case of **Alliance Insurance Corporation LTD v. Arusha Arts LTD**, Civil Appeal No. 297/2017, and the case of **Mukisa Biscuits Manufacturing LTD v. West End Distributors LTD (1969) EA 699**, where the Court held that;

*"A preliminary objection is like what used to be a demurrer. It raised a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. **It cannot be raised if any fact has to be ascertained** or if what is sought is the exercise of judicial discretion".*

As submitted by the Counsel for the Applicants, illegality can be a ground for the extension of time only when such illegality is obvious on the face of the record. To stress on this point, reference is made to the cases of **Amour Habib Salim Husein v. Husein Bafagi** Civil Application No. 52 of 2009 and the **Principal Secretary, Ministry of Defense and National Service V. Devram Valambhia** (1992) TLR 185, where it was held that:

*"In our view when the issue is one alleging illegality of the decision challenged, the court has a duty, in any means extending the time for the purpose to ascertain the point and if the alleged illegality is established, to take the appropriate measure to put the matter and the records right."*

On the same note consider the case of **VIP Engineering and Marketing Limited and three others v. City Bank Tanzania Limited**, Consolidated Civil Reference No. 6, 7, and 8 of 2006 CAT (unreported) where it was stated thus.

*"We have already accepted it as established law in this country that where the point of law at issue is illegality or otherwise of the decision being challenged that by itself constitute sufficient reasons".* The court went further and states that:

*"It is, therefore, settled law that a claim of the illegality of the challenged decision constitutes sufficient reasons for the extension of time under Rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."*

As much as the case at hand is considered, the records show that the Arbitrator called the evidence to deal with the point of the preliminary objection raised by the Complainant contrary to the law which guides on how to deal with the preliminary objection contrary to that it amounts to illegality. The illegality alleged by the Counsel for the Applicants is apparent and visible

on the face of the record hence it qualifies to be a good ground for the Court to grant them leave to file Revision out of time.

Since it has not been stated if the Applicants will be granted an extension of time to file their application for Revision in Court out of time the Respondents will not be prejudiced in any way as stated in the case of **Mobrama Gold Corporation Ltd v. Minister for Energy and Minerals and others** [1998] TLR 425 it will be inappropriate to deny the applicant prayer from this Court as such denial will stifle his case.

For the foregoing reasons, I find the Applicants are entitled to an extension of time. Accordingly, this application is granted. The Applicants shall file the application for Revision within the period of the limitation provided by the law from today. I give no order to costs.

**DATED and DELIVERED at SONGEA this 17<sup>th</sup> day of March 2022**



  
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**U. E. MADEHA**

**Judge**

**17/03/2022**