

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISC. LAND APPLICATION NO. 102 OF 2022

*(Arising from Execution order of Application No. 677 of 2021 in the District Land and Housing Tribunal for
Mwanza at Mwanza)*

ROBERTY MALIMI..... 1ST APPLICANT
JUSTINE MAENGO CHACHA.....2ND APPLICANT
NAOLI BOAZ3RD APPLICANT
GIVEN NYOTA MYOMB..... 4TH APPLICANT
SAI MCHENYA SHAMDA.....5TH APPLICANT
MARIA MATIKO 6TH APPLICANT
MIHAYO LUDAMILA 7TH APPLICANT
LUKAS MORIS MULAHULA 8TH APPLICANT
CHACHA MARWA 9TH APPLICANT
CHACHA MKAMI 10TH APPLICANT
LAURENT THOMAS 11TH APPLICANT
JENIVA JOSEPHAT12TH APPLICANT
JUMA NYAMANYI WAKIBARA 13TH APPLICANT
BINAGI CHACHA 14TH APPLICANT
JOSEPH KISIRI15TH APPLICANT
SAMWEL KATEKERO MIRUMBE.....16TH APPLICANT
KOLODINA PASCAL 17TH APPLICANT
CHACHA NYAICHORI18TH APPLICANT
PASCAL BALIMPAKA MJORERA19TH APPLICANT
JOSHUA ODHIAMBO20TH APPLICANT
LARI MAZWA MAZOZO21ST APPLICANT
VANDAME ELIA SEVERINO22ND APPLICANT



ESTHER PAUL KITULO 23RD APPLICANT
JOSHUA LEONARD NDALABA 24TH APPLICANT
NYANSOHO NYAISAWA 25TH APPLICANT
MWITA MARWA RULAGE 26TH APPLICANT
MARTIN ZACHARIA ELISHA 27TH APPLICANT
SHABANI SAID SHAMDA 28TH APPLICANT
LAURIANA MAXILIAN KATABAZI 29TH APPLICANT
ASHERI ARON 30TH APPLICANT
ZEPHANIA MTOGORI 31ST APPLICANT
ALLY ATHUMANI 32ND APPLICANT

VERSUS

TEREZA HENERIKO GWAPE 1ST RESPONDENT
LAURENSIA MASHAURI GWAPE..... 2ND RESPONDENT

RULING

20th February & 20th February 2023

Kilekamajenga, J.

The instant application seeks an order of extension of time to file an application for revision against the order for execution in Application No. 677 of 2021. The application was brought under **Section 14 of the Law of limitation Act, Cap. 89 R.E. 2019** and **Section 95 of the Civil Procedure Code, Cap. 33 R.E. 2019**. The counsel for the applicants Mr. Geoffrey Goyayi swore an affidavit to accompany the application.



Before this court, the counsel for the applicants expounded the ninth and tenth paragraphs of the application. He advanced two major reasons for extension of time. First, he argued that, the parties were not the parties in Civil Case No. 89 of 2016 at Mahina Ward Tribunal in Nyamagana, they were neither the parties in Land Appeal No. 12 of 2017 nor in Application for execution No. 677 of 2021. This dispute only involved the first and second respondent but the execution order has already affected some of the applicants. In his view, the right to be heard is the fundamental basic right enshrined under Article 13 of the Constitution of the United Republic of Tanzania. Failure to afford the applicants the right to be heard on the order that will affect their rights is an illegality. As the applicants were denied the right to be heard, the extension of time should be granted.

Mr. Mange for the 1st respondent assailed the counsel for the applicants for misusing the application of the doctrine of illegality as a ground for extension of time. On this point, he referred the court to the case of **Juliana Six beth V. Martha Simion Ukaka**, Misc. Land Application No. 392 of 2022. In this case as the applicants were not in occupation of the land in dispute during the trial of the original case, there is no any illegality that should be corrected. He further cemented his argument with the case of **Gervas Kasheko V. Georgina Bizima**, Misc. Land Application No. 118 of 2021. Mr. mange went on arguing that, there are only two categories of illegalities to warrant extension of time,

that is, illegality based on jurisdiction and illegality on time limitation. In this application, the counsel for the applicants has failed to point out either of those categories of illegality for this court to grant extension of time. The counsel invited the court to the case of **Jonas Ntaliligwa V. Fedia Nyayagara**, Misc. Land Application No. 20 of 2021. In this case, part of the execution of the decision of the District Land and Housing Tribunal has been carried out hence the instant application is already overtaken by event. The parties should therefore, obey the court orders. To bolster his argument, he referred the court to the case of **Feruzi Mustafa V. Ayubu Mustafa**, Misc. Land Application No. 16 of 2020. Furthermore, the decision being executed has not been challenged since its delivery in 2017. In his view, the instant application is misplaced as per order XXI, Rule 57 of the Civil Procedure Code, Cap. 33 R.E. 2022 and the applicants, if they had any genuine claim, ought to object the execution proceedings.

On the second point Mr. Mange argued that, the pending matter before the District Land and Housing Tribunal is on 80 acres whereas the instant case is about 5 acres. Therefore, these are two distinctive matters. He prayed for the dismissal of the application with costs. On her side, the second respondent simply prayed for the application to be allowed.

The rejoinder submission from Mr. Goyayi revealed that the 5 acres being contested are part of the 80 acres. He further insisted that, the right to be heard is a sufficient reason to warrant extension of time and that the above cited cases do not bind this court because they are all decisions of the High Court.

In this application, I am prompted to revisit the genesis of the instant application. Back in 2016, the first respondent sued the second respondent in Mahina Ward Tribunal. The case was decided in favour of the second respondent hence the first respondent appealed to the District Court vide Appeal No. 12 of 2017. The first respondent was declared the winner on the mere reason that, the respondent had no locus standi to sue for the land. There was no appeal to challenge the decision of the District Land and Housing Tribunal hence the decree holder (first respondent) applied for execution and she was so granted. The order of the executing court directed the removal of second respondent and his agent(s) or any other person conducting business in the disputed land measuring 5 acres located at Igelegele street, within the Ward of Mahina. The court broker, Rock City Takers Limited, was appointed to execute the above order. The applicants who were already in occupancy of the disputed land were affected by the execution order as some of their houses were demolished. As they were not the parties in the initial dispute, they rushed to file the instant application. In convincing this court to grant extension of time, the counsel for the applicant argued that the applicants were not given the right to be heard.

Indeed, the facts above do not leave any doubt that the applicants who were not involved in the original case are now the victims of the order of the executing court. Interest of justice demands that, a person who is likely to be affected by the order or decision of the court, he/she must be given the right to be heard even if he/she may have no good reason to address the court. I entirely agree with the submission made by the counsel for the applicants that, the right to be heard is a constitutional right under our constitution and ought to be observed. As the decision affects the applicants who had no room to be heard, there is good reason for extension of time to allow them apply for revision. Thus, the application is allowed.

DATED at **Mwanza** this 20th day of February, 2023.



Ntemi N. Kilekamajenga.
JUDGE
20/02/2023



Court:

Ruling delivered this 20th February 2023 in the presence of the counsel for the 1st respondent and the 2nd respondent present in person and the counsel for the applicants absent.



Ntemi N. Kilekamajenga.
JUDGE
20/02/2023

