IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC CIVIL APPLICATION NO 145 of 2022

(Arising from Land No. 103 of *2017 of the District Land and Housing Tribunal for Manyara at Babati, Originating from Riroda Ward Tribunal Land Case of 2017)*

BURA SANDA _____ **APPLICANT**

VERSUS

CHRISTINA HHEKE _____ **1ST RESPONDENT**

ROZALIA BANGA _____ **2ND RESPONDENT**

Date of Order: 18/04/2023
Date of Ruling: 28/04/2023

RULING

BADE, J.

This Application for extension of time is filed to extend the time within which to file Revision Application against the Ruling dated 7th November 2019 by Hon Chairman Mhelele, and the order for execution Pursuant to the Order of the Court Dated 14th March 2023.

The Application seeks a time extension from which the Applicant may bring the Application upon which this court shall have a chance to call for and examine the record of the files in order to find out whether the District Land and Housing Tribunal for Manyara at Babati was properly guided in law and procedures.

In the filed submissions, the Applicant adopted the contents of the affidavit sworn by the Applicant and proceeded to put context to the application as follows.

The Applicant submitted that he has sufficient reasons for the extension to grant as there was an illegality. They contend that the Applicant was arrested, convicted, and sentenced to 6 months imprisonment on criminal trespass on the disputed land, whilst, the chairman of the District Land and Housing Tribunal disregard the Applicant's submission (then Appellant) on the allegation that the Applicant filed its submission out of the fixed court schedule. On the other hand, the court had previously allowed the submission and re-schedule of the order, and the Respondent filed their reply submission. They contend further that the tribunal proceeded to grant the Application for execution unprocedurally and illegally as there was no file from the Ward Tribunal.

The Applicant maintained that they are aware that the law requires that in an application for extension of time, the Applicant must account for every day of delay and must state sufficient reason for the delay, and or the existence of a point of law of sufficient importance to constitute an illegality in the decision sought to be challenged.

The applicant relied on the case of **Principal Secretary, Ministry of Defence vs Devram Valambhia** (1992] T.L.R. 182 where the court held that;

> *"where the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending*

the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record straight.

The applicant maintained that as it transpired, paragraph 13 of the Applicant's Affidavit testifies as to how the Tribunal Chairman misdirected himself and dismiss the Appeal No. 103 of 2017 simply by relying on the respondent's objection while the same was already settled and the rescheduled filing time had been ordered to accommodate the Appellant's submission – Applicant then) on the ground of interest of justice but on 7th November 2019 the chairman disregarded the same and dismissed the Appeal for want of prosecution.

Further the applicant contends that the District Land and Housing Tribunal granted the order of execution while the Ward Tribunal file was not found after it was sought, for the tribunal to be able to ascertain particulars of the disputed land. Paragraphs 9 and 10 of the Applicants Affidavit correctly state what transpired in Case file No. 13/2021 as was perused.

The applicant charges that this was in total disregard of the legal principle that the executing court should not add, reduce or change anything from the decree, and it has no power to go beyond its terms. So they maintained that this Application had to be preferred for enlargement of time within which the revisional jurisdiction of this court may be exercised to call for and examine the record of the proceedings before the lower court.

In urging the Court to exercise its revisional powers, the applicant further cites the case of **Olmeshuki Kisambu vs Christopher Nairgola** [2002] TLR 280 at 283 where the court held that,

"------ the court power of revision can come into play where the record reveals, incorrectness, illegality or impropriety in any finding. order or other decision.....or irregularity in the proceedings of the court...this power is given to the court to rectify any error, illegalities or impropriety in the decision or proceedings which is brought to its attention.....even if many contended that the order or ruling is correct, then this court may invoke revision for the purposes of considering the legality and correctness of the orders..."

The Applicant explain that in furtherance of the said illegality, the Applicant *was* in fact imprisoned on criminal trespass on the same suited land, and upon being released, he had made follow-up on the whereabouts of his case to no avail as the file was nowhere to be found until 25th April 2022 where the file resurfaced. That is when he contends, was able to make this Application for the first time before this very court. However, on 13th September 2022, it was struck out for incompetence before Hon. Kamuzora, J. which is why he had preferred this application.

The applicant further persuade this Court to look at some of the decisions that this court sitting in Musoma made in the case of **Nyirabu Getunguye vs Chacha Wambura, Misc Land Application No. 52 of 2020** before **Kahyoza,** J. where, citing the Kenyan case of Robert **Walusekhe Wasikana vs John Dianga Obaso (suing as Guardian Ad Litem of Samuel Awour Tongo)** [2016] eKLR where the court held that;

"Disputes concerning land are deep seated and emotive, and as such should be ventilated, heard and determined conclusively"

The Applicant concludes his submission that under the circumstances, it is their prayer that the court allows this Application for the sake of justice to give the court a chance to rectify the errors and makes orders which shall give way for the dispute to be heard and determined on merit and conclusively.

The Respondents replied that the appeal at the District Land and Housing Tribunal was dismissed for want of prosecution since the appellant failed to present his written submission. He argues that since that is what the law directs, he sees no point of illegality as the appellant failed to utilize his right to abide by the court schedule.

On further argument, he contends that all the authorities would have no basis since there is no illegality, which consequently means the Applicant has not met the criteria for a sufficient reason to have the time extended; and thus pray to have the application dismissed with costs.

From the considered submissions, the issue for determination is whether the Applicant have provided sufficient reasons for the Court to grant him extension of time to file for Revision Applications, to enable the Court to revise the proceedings of the lower court while alleging illegality.

As a general principle, it is the discretion of the Court to grant an application for extension of time upon a good cause shown. See **Tanga Cement Company vs Jumanne D. Masangwa and Another,** Civil Application no. 6 of 2001, Court of Appeal; and **Praygod Mbaga vs Government of Kenya Criminal Investigation Department and Another,** Civil Reference No 4 of 2019, Court of Appeal, Dar Es Salaam.

The essence of both cases is that where extension of time is sought, the Applicant will be granted, upon demonstrating reasonable or good or sufficient cause for the delay. The phrase "reasonable cause" or "sufficient cause" has been interpreted in several decisions of the Court to be a relative one, rather estimated by comparison dependent upon the party seeking an extension of time to provide relevant material in order to move the court to exercise its discretion. The good cause must be determined by reference to the circumstances of each particular case. The sufficient cause sought depends on the deliberation of various factors such as the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent to occur. The Court of Appeal had observed in **Dar Es Salaam City Council vs Jayantilal P. Rajani,** Civil Application No. 27 of 1987, that:

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

The Court of Appeal had a similar position in the case of **Tanga Cement Company vs Jumanne D. Masangwa & Another,** (Supra), where it held that:

> ".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judicially, and the overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From decided cases a number of factors have been taken into account,

including whether or not the application was brought promptly; the absence of any valid explanation for the delay; or lack of diligence on the part of the applicant."

I have taken notice that in the present case, the filed joint counter affidavit of Christina Hekke and Rozalia Banga is created in an evasive denial contrary to the principle that when a party denies an allegation of fact in the previous pleading of an opposite party, he must not do so evasively, but answer the point of substance. I think answering a point in substance gives the court an opportunity to look at the material facts and circumstances of the case to aid the determination of the application. As per the case of **Thorp vs Holdsworth** (1876)3 Ch D 637 where it was held

> "it is the very object we have always had in pleading to know what the defendant's version of the matter is in order that the parties may come to an issue"

The joint counter affidavit does not set out any facts in opposition, so it should be either taken that the affidavit of the applicant is uncontested or rather facts as put forth in the affidavit of the applicant are admitted as there is no other version put forth by the Respondents since evasive denial which is not traversed is on the same footing as an admission.

From the submission of the Applicant, it is obvious there was a denial of opportunity to be heard which is a failure of justice. Paragraph 13 of the Applicant's Affidavit testifies as to how the Tribunal Chairman misdirected himself and dismiss the Appeal No. 103 of 2017 simply by relying on the respondent's objection, while the same was already settled and the rescheduled filing time had been ordered to accommodate the Appellant's

submission – Applicant then) on the ground of interest of justice. The Applicant had filed his submission 5 days after the ordered schedule, (see Paragraph 5 of the Affidavit). On 26th September 2019, the matter was mentioned, and the tribunal had vacated its order and admitted the said submission, and rescheduled the respondents' filing of their response 14 days after on 14th October 2019, with a further option to file a rejoinder on 21st day of October 2019. On 7th November 2019, the matter was mentioned again, and it was found that at this time, since the Appellant did not appear for the reason of being incarcerated, the case was dismissed for want of prosecution (see paragraphs 12 and 13). The chairman disregarded its previous order and dismissed the Appeal for want of prosecution. The Respondents in their joint counter affidavit simply noted these averments without prejudice in their paragraph 9.

Also, Paragraphs 9 and 10 of the Applicants Affidavit state what transpired in Case file No. 13/2021; averments which are put to strict proof without setting any other version.

Having applied my mind to the going material and weighing the issues presented, I find justification in accepting the applicant's position. The lower court's decision was made in error and misdirection of its own previous order, which embodied an illegality that caused a miscarriage of justice to the Applicant. I also see that the applicant was not sloppy in following up on the matter nor was there a lack of diligence.

In the upshot, I allow the enlargement of time within which the applicant is to file his application for revision. The same to be filed within 14 days

from the date of this ruling.

Dated at **Arusha** this **28th** day of **April 2023**

A. Z. Bade
Judge
28/04/2023

Judgment delivered in the presence of parties / their representatives in chambers /virtually on the **28th** day of **April 2023.**

A. Z. Bade
Judge
28/04/2023