THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS LAND APPLICATION NO. 55 OF 2022

(Arising from Judgment of the District Land and Housing Tribunal of Moshi at Moshi in Application No.62 of 2008 dated 24th day of November, 2008)

HON. ATTORNEY GENERAL.....1st APPLICANT

MOSHI MUNICIPAL COUNCIL..... .....2nd APPLICANT

VERSUS

BARNABA MIROSHI..... RESPONDENT

RULING

10th & 28th July 2023

A.P.KILIMI, J.:

This ruling is in respect to application for extension of time within which to lodge revision out of time against a decision in Land Application No.62 of 2008 of Moshi District Land and Tribunal which was delivered on 24th November, 2008. This application is brought under section 14 (1) of the Law of Limitation Act (Cap 89 RE 2019) and Section 95 and Order XLIII Rule 2 of the Civil Procedure Code Cap. 33 R. E 2019 and any other provision of the law. The same was supported by the applicant's affidavit made by Tamali

Zawadi Mndeme a Regional State Attorney stationed at Moshi in the office of 1st Applicant.

The factual background from which this application accrue, is that the respondent successfully filed an application at the District Land and Housing Tribunal at Moshi, application No.62 of 2008 claiming for ownership of Plot No.144, Block "A" Section IV L.O. No. 266386 with CT.21121 Majengo area within Moshi Municipality, whereas the respondent was declared to be the lawful owner of the suit land. On 10th October, 2022 the 1st applicant being aware of presence of the application No.62 of 2008 and noted that they are time barred, filed this instant application.

When the matter came for hearing of this application, Yohana Marco, a learned State Attorney appeared for applicants whereas the respondent was represented by Mr. E. G. Kipoko a learned counsel. Both agreed this application be argued by way of written submissions. I applaud both for timely submission and deeply research made, however, in unusual manner, with respect Mr. Kipoko raised five preliminary objections in his submissions. In my view, since the applicants has filed joint affidavit and respondent filed counter affidavit. I will refer to submissions when the need arises.

To substantiate the above, the learned state Attorney submitted that, since the 1st Applicant became aware on 10th of October 2022 and the application was filed on 26th of October 2022 it was 15 days in which this application was prepared, in his opinion, that was a reasonable days which 1st Applicant accounted for. To bolsters this position, he invited me to refer the case of **Emmanuel Rurihafi and Another vs. Janas Mrema,** Civil Appeal No. 314 of 2019, Court of Appeal at Dar-es-Salaam.

Furthermore, the learned State Attorney submitted that the Land Application No.62 of 2008 contains serious illegalities which cannot be overlooked. as per paragraph 8 and 9 of their affidavits the District Land and Housing Tribunal did not have pecuniary jurisdiction because the applicant therein did not have material facts or valuation report ascertaining the actual value of the disputed land, thus the illegalities he alleged is apparent on the face of record. To buttress this point Mr. Yohana Marco referred to the following cases; The case of **Lyamuya Constraction Company vs. Board of Registered Trustee of young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010, CAT at Arusha, **Arunaben Chaggan Mistry vs. Naushad Mohamed Hussein & 3 Others,** Civil Application No.6 of 2016, CAT at Arusha and **Kastan Mining PLC vs.**

COLOM Investment (T) Ltd, Civil Application No.95/01 of 2019, CAT at Dar-es-Salaam. (Both unreported)

Also, in supporting his contention of illegality in respect to the need proving the pecuniary jurisdiction, evidence to substantiate that by facts or valuation report need to be attached in application, the learned State Attorney referred the cases of **Rehema Kenge vs. Aniseti Mayala Nyanda**, Land Appeal No.75 of 2019, High Court at Mwanza, and **Dr. Deodatus Mwombeki Ruganuza (Administrator of the Estate of the late Domistocles John Ruganuza) vs. Abdulkarim Meza,** Land case No.4 of 2020, High Court at Bukoba.

As I stated above in regard to submissions filed, in regard to submission made by Mr. Kipoko I have this to say, the learned counsel strongly contended that the Applicants in their joint affidavit had failed to establish how and when they become aware of the judgment in application No.62 of 2008, so this make it impossible for the court to gauge the extent of delay, the counsel insisted that the applicants failed to account for the delay since 2008 when the decision was delivered. The counsel to buttress his stance has cited the cases of **Cosmas Constraction Co. Ltd vs. Arrow Garments Ltd** (1992) TLR 127 , **Sebastian Ndaula vs. Grave Rwamafa**

(Legal Personal Representantive of Joshwa Rwamafa), Civil Application No.4 of 2014 **Bariki Israel vs. The Republic,** Criminal Application No.4 of 2011(Both unreported).

The counsel contended further that the extension of time has to be made within a reasonable time which should not be more than twice the period of limitation provided by the law but the applicants failed to do so. The counsel cited the case of **Tanzania Harbours Authority vs. Mohamed Mohamed** (2003) TLR 76**, DPP vs. Prosper Mwalukasa** (2003) TLR 34 and **Mobrama Gold Corporatio LTD vs. Minister for Energy and Minerals and 3 others** (2001) TLR 505.

Submitting on the issue of illegality the counsel strongly contended that the applicants failed to indicate the page number or paragraph or line in that judgment which imply lack of jurisdiction by the trial tribunal. The counsel insisted that the valuation report is not legal requirement, the statement of the estimated value of the suit premises was enough to establish the jurisdiction of the tribunal. To cement his submission the counsel referred the cases of **Kastan Mining PLC vs. Colom Investment (T),** Civil Application No.95/01 of 2019, CAT, Dar es salaam**, Hamad Shaban Kagunda vs. Maulid Rashi,** Land Appeal No.16 of 2019, High

Court at Tabora (unreported) and the case of **The Board of Trustee of the Free Pentecostal Church of Tanzania vs. Asha Seleman Chambanda & Another,** Civil Application No.63/07 of 2023 at CAT Mtwara.

Having considered the rival submissions filed, I wish to highlight that this matter to be resolved will be capitulated into two limbs as argued by the applicant, first account of each day of delay for the applicant and second whether there is illegality.

In the first limb, the issue for determination is whether appellants advanced good cause to be granted extension of time by accounting for each day of delay. It is trite law that the application for extension of time is entirely in the discretion of the court to grant or to refuse it before or after expiry the period of limitation. Reference can be made to section 14(1) Cap 89 which provides as follows;

> *"14(1) Notwithstanding the provision of this Act, the court may, **for any reasonable or sufficient cause**, extend the period of limitation of an appeal or an application, other than an application for execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application"*
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> [Emphasizes supplied]

Moreover, the provision above has been dealt by courts of this land, that the extension of time may only be granted upon good cause being shown and where the delay has not been caused or contributed by the dilatory conduct on the part of the applicant. See **Benedict Mumello vs. Bank of Tanzania,** Civil Appeal No. 12 of 2002 CAT and **Jaluma General Supplies Limited vs. Stanbic Bank Limited**. Civil Application No. 48 of 2014 CAT (Both unreported).

At paragraph 6 of the joint affidavit, it has been deponed that the office of the first applicant became aware of presence of impugned decision on 10th October, 2022. This is when was informed by the second applicant after receiving notification letter from the Registrar of Titles dated 4th October, 2022 which requires the second Applicant to produce Certificate of Tittle of the land decided in that application to belong to the respondent.

There is no dispute that the said case Application No. 62 of 2008 which the applicant seeking for revision was decided on 24th November, 2008. Therefore, for the time first applicant is becoming aware, as rightly said in applicant submission it is almost 13 years and 8 months since the said case was determined.

I have no doubt and I concede with the power stated of the first applicant which was introduced by the GN. No. 48 of 2018 to intervene in any suit or matter instituted against the local government authorities like this one, I am also in agreement with the fact stated that the time begins to run from the date he becomes aware of the said decision to be impugned which is 10th October, 2022. And indeed, the time used to file this application after becoming aware is reasonable and justified.

However, according to verification clause of the said affidavit, the learned Regional State Attorney who sworn the said affidavit on behalf of all applicant stated that she was informed by the second applicant what she has averred in paragraph 4 and 5 of the said affidavit. For this purpose, I wish reproduce these paragraphs hereunder;

> *"4. That, the Application No. 62 of 2008 was instituted by the Respondent against the 2nd Applicant in District Land and Housing Tribunal for Moshi in 2008 claiming ownership of Plot. No. 144, Block "N" Section IV L.O 266386 with CT. 21121 at Majengo Area containing One Decimal Point Zero Three Eight (1.038) hectares which is in the ownership of the second Applicant.*
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> *5. That, the 2nd Applicant did not enter defense in the said Application No. 62 of 2008 which led to the same to proceed ex-parte against her and, as of consequence, the judgment was also entered ex-*

parte. It is further stated that, the said judgment has never been executed by the Respondent."

I have asked myself when did the second applicant became aware of the above information. I have entirely passed through the said joint affidavit nowhere it was deponed when did the second applicant knew the existence of the above stated in mentioned above paragraphs. I am not in agreement with applicant's submission when said that the period from 25th November, 2008 to 10th October, 2022 which is almost 13 years, 8 months and 16 days is deemed to have been accounted for because it is the total period in which the first Applicant was not aware of the decision sought to be impugned. This is because submissions are not evidence and they cannot be used to substitute the contents of their affidavit as it was observed by the Court of Appeal of Tanzania in the case of **Bruno Wenceslaus Nyalifa vs. Permanent Secretary, Ministry of Home Affairs and the Attorney General,** Civil Appeal No. 82 of 2017 where it was held that:

"Submissions are not evidence submissions are generally meant to reflect the general features of a party's case. They are elaborations on evidence already tendered. They are

expected to contain arguments and the applicable law. They are not intended to be a substitute for evidence."

Moreover, the fact that it was deponed that the said notice from Registrar of title was communicated to the applicants on 10th October, 2022. In my view does not mean that is when the second applicant became aware of the case, if there is no sworn affidavit to that effect. Thus, it is my opinion receiving notifying letter which aim to change the title might not mean awareness of existed case if not specific pleaded in the affidavit that second applicant did not know before the said notification. (See **Sabena Technics Dar Limited vs. Michael J. Luwunzu,** Civil Application No. 451/18 of 2020, CAT **Franconia Investments Ltd vs. TIB Development Bank Ltd**, Civil Application No. 270/01 of 2020 (both unreported).

Also, in this regard, in my perusal to the record of this case, I came across an application as rightly mentioned by Mr. Kipoko, which is Miscellaneous Land Case no. 2 of 2022. In this application even without joining Attorney General as applicant. On 14th January, 2022 the second applicant in this matter, filed an application in this court praying for extension of time to file appeal out of time. On 13th September, 2022. This court dismissed the said application and reasoned that the second applicant has

failed to account for each day of delay as required by the law. With respect to Mr. Muyingi learned state Attorney, who sometimes appeared in this matter was the one who was the counsel for Moshi Municipal Council in the said application which is Miscellaneous Land Case no. 2 of 2022. Therefore, I have no doubts that the second applicant was aware of the existence of the said *ex parte* decision of the Tribunal even before the date of receiving notification letter of title dated 4th October, 2022 as stated in paragraph 6.

Therefore, from the above, I am of considered opinion the second applicant being a necessary party from the beginning at the tribunal also ought to have accounted on each day of delay from when became aware of the existence of the said decision, and since he had an application filed in this court as stated, with respect I may say is lacking of diligence and has totally failed to explained for delay. Therefore, since no evidence to prove contrary to what I has endeavored on part of the second applicant, whom I believe knew what is doing after uplifting the veil above, the second applicant in my view cannot seek a refuge to the awareness of the first applicant, who came in by virtue of the law cited above in 2018 almost 10 years from when the case was decided by the tribunal. (See cases of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany**

and Another, Civil Application No. 278/15 of 2016, CAT, **Finca T. Limited & Another vs. Boniface Mwalukisa**, Civil Application No. 589 of 2018) [2019] TZCA 56, **Zawadi Msemakweli vs. NMB PLC**, Civil Application No. 221/18/2018 CAT (both unreported)

In the second limb, is whether there was illegality. Before addressing this limb, I must say, the law is trite to the effect that a claim of illegality can only be entertained if it meets certain criteria. That is the illegality is apparent on face of record, is of sufficient importance and the determination of it shall not involve a long-drawn process of argument. These criteria were settled by Court of Appeal in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania Civil Application No. 2 of 2020**.

The applicant has deponed on paragraph 8 that the District Land and Housing Tribunal for Moshi had no pecuniary jurisdiction to hear and determine the said Application No. 62 of 2008. Also, they added at paragraph 9 that, in the said Application No. 62 of 2008 the Applicant, who is now a Respondent, did not attach valuation report in his application to establish the pecuniary jurisdiction of the Tribunal as is required by law.

I subscribe with the applicant submission that illegality must be apparent on the face of record. (See the case of **Kastan Mining PLC vs. Colom Investment (T) Ltd** (supra). Now, the point to be considered is whether in this matter the said illegality is apparent on the face of record.

I am mindful, application of this kind the court need not to overlap into the merits of the intended application for revision. This was the guidance in the case of **Regional Manager- TANROADS Lindi vs. D.B Shapriya and Company Limited,** Civil Application No. 29 of 2012 (Unreported) where it was stated:

> *".. .It is now settled that a Court hearing an application should restrain from considering substantive issues that are to be dealt with by the appellate Court this is so in order to avoid making decisions on the substantive issue before the appeal itself is heard. Further to prevent a single judge of the Court from hearing an application by sitting or examining issues which are not his/her purviews. "*

It was applicants' submission that in the proceedings there is neither any tendered document substantiating the pecuniary jurisdiction nor did the DLHT bothered to address it. I understand the issue of jurisdiction is the point of law and can be raised at any stage of the case, even in appeal or

revision, (See the case of **Sospeter Kahindi vs. Mbeshi Mshani,** Civil Appeal No.56 of 2017 CAT at Mwanza (unreported). But according to the usual practice, Litigants does not submit plaint or application with the document such as valuation report proving pecuniary jurisdiction of the court, therefore, if plaintiff or applicant has estimated the value in his plaint or application the court or tribunal should take it as a correct value of the suit land which will be subject to proof by evidence on trial when it is contested. Therefore, the court takes it as rebuttable presumption at the option of the other party.

Therefore, it is my understand, what is important is that the plaint must contain a statement on the monetary value of the subject matter. Then, this is useful for court officers to ascertain whether it has jurisdiction over the matter or not, another useful for that statement is for assessing court fees. (See **Hertz International Ltd and another vs. Laisure Tours Ltd and 3 others**, Commercial Case No, 74 of 2008.)

Having observed above, since it is not necessary to support plaint or application with any document showing pecuniary jurisdiction unless it is contested so as to be proved. I am of considered opinion this point of illegality the applicants are trying to raise, needs to be established by process

of ascertaining of facts, thus, the alleged illegality cannot be seen by one who runs and reads, therefore, is not obvious and patent mistake. In view thereof, I am settled that the said cannot be illegality which is termed to be apparent in the face of record. This is because it is a trite law that for illegality to be a ground for extension of time, it must be apparent on the face of record. (See the cases of **African Marble Company Limited (AMC) vs. Tanzania Saruji Corporation (TSC),** Civil Application No. 8 of 2005 [2005] TZCA 87, **Abdi Adam Chakuu vs. Republic**, Criminal Application No. 2 of 2012 [2017] TZCA 138, **Ansaar Muslim Youth Center vs. Ilela Village Council & Another**, Civil Application No. 310 of 2021 (Both unreported).

In regard to the case referred by the applicants, the case of **Rehema Kenge vs. Aniseti Mayala Nyanda** (supra) and **Dr. Deodatus Mwombeki Ruganuza (Administarator of the Estate of the late Domistocles John Ruganuza) vs. Abdulkarim Meza** (supra), I have considered them, I have seen the facts on these cases cannot cause me to extract the ratio on those cases and be useful to this case in hand, therefore I am of the view, they are distinguishable from this case at hand.

However, notwithstanding the above, according to regulation 11(2) of Land Dispute courts (The District Land and Housing Tribunal) Regulation, GN 174 of 2003, where a party is dissatisfied with the decision of the tribunal decided ex-parte, he or she should apply to set aside the said decision and in case of refusal, the application to set aside should appeal to the High Court. In this matter nowhere the applicants have stated to apply this avenue of the law available. In the case of **Abdulrahman Mohamed Ally vs. Tata Africa Holdings T. Limited** Civil Application 166 of 2021. (Tanzlii) the court observed that;

> *"in determining whether sufficient reason for extension of time exists, the court seized of the matter should take into account not only the considerations relevant to the applicant's inability or failure to take the essential procedural step in time, but also any other considerations that might impel a court of justice to excuse a procedural lapse and incline to a hearing on the merits. Such other* ***considerations will depend on the circumstances of the individual cases and include****, but are not limited to, such matters as:* ***the promptitude with which the remedial application is brought,*** *whether there was manifest breach of the rules of natural justice in the decision sought to be challenged on the merits, and the prejudice that may be occasioned to either party by the grant or refusal of the application for extension of time. This broad approach is preferable as a judicial discretion is a tool,*

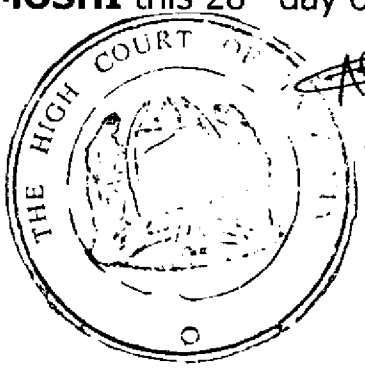
or device in the hands of a court for doing justice or, in the converse, avoiding injustice."

[Emphasis supplied]

In the premises for the two limbs discussed above, I have nothing to say except to hold that, the applicants have failed to meet the test for the application to be granted. For all said hereinabove, I find that this application is devoid of merit and dismissed in its entirety. In the circumstances no order for costs granted.

It is so ordered.

DATED at **MOSHI** this 28th day of July 2023.



A. P. KILIMI

JUDGE

28/7/2023