

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISC.CIVIL APPLICATION. 27 OF 2022**

*(Arising from Execution of Civil Case No 51/2001 of the District Court of  
Kahama at Kahama)*

**MAKOYE KINTOKI ..... APPLICANT**

**VERSUS**

**AMOS MAGANGA ..... 1<sup>st</sup> RESPONDENT**

**HUSSEIN KHAN ..... 2ND RESPONDENT**

**GWAMA AUCTIONEER AND COURT BROKER ....3<sup>rd</sup> RESPONDENT**

**RULING.**

21<sup>st</sup> April & 28<sup>th</sup> July 2023

**MASSAM, J.:**

The Applicant herein preferred this application praying for extension of time within which to file Revision Application before this court to set aside the sale of the Applicants matrimonial home situated at plot no. 136, Nyasubi Area, Kahama town, made in Execution of Civil Case No. 51 of 2001 at the District Court at Kahama at Kahama. The application was brought by way of chamber summons under section 14(1)(2) of the Law of Limitation Act Cap. 89 R.E 2019 and 95 of the

Civil Procedure Code Cap 33 R.E 2019. The application was supported by an affidavit deposed by the applicant herein. The Respondent filed counter affidavit contesting the application.

As a matter of legal representation, the Applicants enjoyed the service of one Mr. Moses Ghumba a learned advocate while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents appeared in person with no any legal representation while the matter proceeded ex-parte against the 3<sup>rd</sup> Respondent. Hearing of the application was by way of filing written submission and each party filed its submission as scheduled.

Arguing in support of the application, the counsel for the Applicant adopted the contents of the affidavit filed in support of the application to form part of his submission and added that, pursuant to clause 7 part II of the Law of Limitation Act Cap 89 R.E 2019 the law requires an application to set aside the sale be made within 30 days from the date of the sale.

That as per annexure MK3 and MK5 the impugned sale was made on 28/04/2004 that is 19 years passed. That as per Section 14(1) of the Law of the Limitation Act, this court has the discretion to extend time upon sufficient cause for the delay being made. That upon the exercise of its discretion the court ought to act judiciously. He cemented his

submission with the case of **Bank of Tanzania Vs. Emerenciana Chrysostom**, Civil Application No. 44/2009 which held that *like any other judicial discretion it must be exercised judicially and on sound principle, it is established that this discretion is exercised in favour of the applicant showing evidence of sufficient cause.*

That what amounts to sufficient cause has not been defined under the law rather on various judicial decision such as **Abdalla Salanga and 63 others vs. Tanzania Harbors Authority**, Civil Application No 4 of 2001, **Said Ramadhani Vs. Geita Gold Mine Ltd**, Misc. Labour Application No. 29 of 2013.

The Counsel for the Applicant went on and submitted that, pursuant to paragraphs 6 to 19 of the affidavit, the Applicants was busy in court corridors pursuing for justice. That even the respondent acceded to the fact that they were all busy in court corridors hence sufficient reason for the time enlargement and he referred this court to the case of, **Robert Scheltetens Vs. Balden Norataran Varma and 2 others**, Civil Application No. 112/2016 and Section 21(1) of the Law of Limitation Act Cap 89 R.E 2019.

The other reason advanced by the counsel for the Applicant for the grant of extension of time is the illegalities and irregularities of the sale.



That there was no execution filed at the trial court to warrant the Respondent to file execution, that after the delivery of the ex-parte decree against the applicant, there was no any proceeding or record that was made in respect of the said execution. The other irregularity pointed out is that, the principle of natural justice was not adhered in the said proceedings. That the law requires that one should not be condemned unheard. Reference was made to Article 13(6) of the Constitution of the United Republic of Tanzania and the case of **Abbas Sherally & another Vs. Abdul Sultan Haji Mohamed Fazalboy**, Civil Application No 33 Of 2002, **VIP Engineering Marketing Limited & 2others, Vs. Citi Bank Tanzania Ltd**, Consolidated Civil revision No 6,7 and 8 of 2006.

That the other irregularity is the selling price which was Tsh 2,400,000/ while the house worth more than Tsh 65,000,000/=. That since the debt was for Tsh 200,000/= the trial District court lacked jurisdiction to entertain the matter as per Section 18 (10) (a) (iii) of the Magistrates Courts Act Cap 11 and Section 13 of the Civil Procedure Code Cap 33 R.E 2019.

The other illegality is that of selling of the matrimonial house contrary to Section 48(1) (e) of Cap 33. That also the summons sent to

the Applicant was all forged. That the judgment issued and its decree grant two distinctive reliefs contrary to Order XX Rule 6(1) of Cap 33. That illegalities amounts to sufficient cause to warrant the grant of extension of time as per the case of **Principal Secretary Ministry of Defense and National Service Vs. Devarm Valambhia** (1992) TLR.182

That, the requirement to account for each day of the delay does not cover the present application which has been clothed by illegalities and irregularities. Basing on the Strength of the submission made the Applicant prays that the application be granted.

Contesting the application, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent responded that, the Applicant did appeal against the decision of the trial court vide DC. Civil Appeal No 18 of 2011 originating from Civil Case No. 51/2011 Kahama District Court Hon Kipilimba whereon Before Hon. Gwae, J and the appeal was dismissed with costs for being time barred.

The Respondents went on and submitted that the applicant has not adduced sufficient reasons to warrant the grant of the prayer sought. That since the respondent instituted the matter before the trial court until now it has pass more that 22 years, it is the respondents' prayer that this matter should come to an end.

Upon a brief rejoinder submission made by the counsel for the applicant, he reiterated his submission in chief and added that, it is an established principle in our legal jurisprudence that in application for extension of time, the Applicants duty is to establish reasonable cause for the delay, that years do not bar a party to get his right in court.

Having heard the submissions made by the parties for and against this application, the pertinent issue for the adjudication by this court is **whether the Applicant has adduced sufficient reasons for grant of extension of time**. It should be clearly noted that, grant of extension of time is a matter of discretion of the court, the discretion which however must be exercised judiciously, see **Mbogo Vs. Shah** [1968] EA 93. In that case the court highlighted factors to be taken into account by the court in deciding to either grant or refuse to grant extension of time. It was held: -

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the **length of the delay, the reason for delay/whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended**".*



The Court of Appeal of Tanzania also formulated the guidelines to be considered in granting the extension of time in the case of **Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported). The court held that: -

*"On the authorities however, the following guidelines may be formulated:*

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged"*

In the case at hand, the Applicants pleaded two grounds for the extension of time; technical delay and illegality premised on the sale of the matrimonial property.

Regarding to the first ground which is based on technical delay, I assessed the court records, the affidavit in support of the application

and the submission by the counsel for the Applicants and the following were observed.

The ex-parte judgement in Civil Case No 5 of 2021 was delivered on 18/12/2002 in favour of the Respondent and the Applicants wife filed an objection proceeding in Misc. Civil Appeal No 2 of 2004. That on 28<sup>th</sup> April 2004 the respondent made an application for execution of the ex-parte decree and the same was granted and on 28/04/2004 auction was made against the suit property.

That the applicant filed a civil Appeal No 23/2007 challenging Civil Case No 51/2021 which the same was struck out for want of proper decree. That the Applicant again filed Civil Appeal no 2 of 2011 challenging the declaratory order for eviction which was not granted. That in attempt to rescue his property, the applicant filed Misc. Civil Application No. 64 of 2014 seeking for leave to appeal out of time against ex-parte Decree in Civil Case No 51/2021 in vain. That on 03/12/2014 the applicant filed Misc. Civil Application No 73/2014 seeking for order that the Applicant not to be evicted pending the determination of Misc. Civil Application No 64/2014.

That it was until on 04/07/2022 that the Applicant preferred the current application seeking for time enlargement. Now the question is



whether the Applicants delay was reasonable, and whether the Applicant accounted for the days of delay as it was so propounded in the case of **Bushiri Hassan V Latifa Lukio Mashayo**, Civil Application No 3 of 2007 CAT at Arusha (Unreported). In that case it was held that a delay of even a single day, has to be accounted for, otherwise, there would be no need of having rules prescribing periods within which certain steps have to be taken.

The Counsel for the Applicant adduced a series of event explaining how he made various applications before the court of law but however the applicant has not accounted for each and every time he had delayed in filing the application on time. Having said so, I do not agree with the Applicant's counsel that there was technical delay. Technical delay would have been established if the Applicants were able to account for the period from when the execution order was issued until when the current application was preferred.

Regarding points of illegality, it is clear that illegality by itself constitute a sufficient ground for an extension of time. However, for the illegality to be the basis of extension of time it is now settled that it must be apparent on the face of record and of significant importance to deserve the attention of the court. In determining the illegality, it does

not mean that the court must determine the facts establishing the alleged illegality, rather it will have to determine as whether the pointed illegalities are well established and are on the face of record.

In this application, the illegalities stated by the counsel for the Applicant is that, there was no any auction file at the trial court, the applicant was condemned unheard, the selling price was low than the worth of the house, the act of selling of the matrimonial house in execution, issue of forgery of the applicants' signs in summons before the trial court. The said illegalities pointed out by the Applicants counsel are not apparent on the face of record. They require a long-drawn argument for one to discover the said illegalities.

In the final analysis, this court is satisfied that the Applicant have failed to prove technical delay by accounting for each day of delay. Similarly, the Applicant was unable to prove points of illegality to justify the grant of extension of time. I therefore find this application devoid of merit and it is hereby dismissed with costs.

It is so ordered.

**DATED at SHINYANGA** this 28<sup>th</sup> day of July 2023.



A handwritten signature in blue ink, appearing to be "R. B. Massam".

**R. B. Massam**  
**JUDGE**  
**28/7/2023**