

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI

MISCELLANEOUS LAND APPLICATION NO. 49 OF 2023

(Arising from Misc. Land Appeal No. 22 of 2019 in the District Land and Housing Tribunal for Babati at Babati)

THERESIA JOHN *(Suing as administratrix of the
estate of the late Josephina Joseph)*.....**APPLICANT**

VERSUS

SISILIA DAWIDO SULLE **RESPONDENT**

RULING

31st July & 16th August, 2023

Kahyoza, J.:

Sisilia Dawido (the respondent) sued **Seleto Village Council, Dareda Water Supply Board** and **Theresia John** claiming compensation for trespass before the District Land and Housing Tribunal (the DLHT) through Land Application No. 16 of 2015. The DLHT found in favour of **Sisilia Dawido**. It ordered to **Seleto Village Council and Dareda Water Supply Board** to pay compensation and general damages to **Sisilia Dawido** to the tune of Tzs. 2,500,000/= and 2,000,000/= respectively.

Aggrieved, **Theresia John** appealed to the High Court through by instituting Land Appeal No. 33 of 2019. The respondent disputed the allegation. The High Court overturned the decision of the DLHT and

directed any interested party to reinstitute the case in the appropriate tribunal. It also directed parties to revert to the position before **Sisilia Dawido** instituted Land Application No. 16 of 2015.

Theresa John instituted the instant application praying for extension of time seeking to file an application for revision. The applicant's ground for extension of time discerned after blood, sweat and tears is that the DLHT's tribunal's order is stained with irregularities. The applicant's affidavit contained irrelevant, which with all respect to the applicant's advocate, I will not give them attention. **Theresa John**, the applicant, averred and her advocate submitted that **Sisilia Dawido** applied to the DLHT seeking to execution a non-existing order. She averred that **Sisilia Dawido** was seeking to execute the order in Land Application No. 16 of 2015 which was overturned by the High Court.

The respondent refuted the averment that she was executing a non-existing decree. Unfortunately, she did not specify the decree she was executing. I wish to quote her averment in her counter affidavit. She deponed that-

"That the contents of paragraph 20 of the applicant's affidavit are also disputed."

I had a cursory review to the applicant's affidavit, counter affidavit and the attached documents, to say the least, it is illegal for the respondent to execute the decree in Land Application No. 16/2015. The DLHT's decree in Land Application No. 16/2015 was rendered a nullity by the judgment of the High Court on appeal. There was nothing to execute. The DLHT did not specify in its ruling which decree it was executing. I, therefore find on the balance of probability that the applicant has proved the existence of illegality on the face of record of the impugned decision.

It is settled law that illegality is a sufficient ground for extension of time as the Court of Appeal held in **Principal Secretary Ministry of Defence And National Service v. Devram P. Valambhia** [1992] T.L.R. 387. Provided that alleged illegality is apparent on the face record of the impugned decision and its of sufficient importance. See the case of **Jeremia Mugonya Eyembe vs Hamisi Selemani**, (Civil Application 440 of 2020) [2021] TZCA 695 (29 November 2021) where the Court of Appeal held that-

*"Admittedly, illegality or otherwise in the impugned decision can by itself constitute a sufficient ground for an extension of time. This is in accordance with the principle in the **Principal Secretary Ministry of Defence and National Service vs. Devram Valambhia**, (1992) TLR 185. However, **for illegality to be the***

basis of the grant, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of the appellate court”.

The applicant alleged further that, the tribunal proceeded *ex parte*. The respondent admitted the allegation that the application for execution proceed *ex parte*. However, she was quick to react that, she served the applicant through her attorney one Peter Damas, and the applicant resolved not to appear.

It is not disputed the application for execution proceeded *ex parte*. The issue is whether the applicant neglected to attend after the respondent served her. It is trite law that, proof of service is by filing an affidavit. The respondent did not produce a copy of an affidavit to prove that the applicant was served with the summons to appear and defend that application. The respondent did not move me that she served the applicant who resolved not to enter appearance. I find that the applicant was not served before the DLHT passed ordered affecting her interest. The DHLT’s failure to ensure the applicant was served before it passed an order affecting her right is another illegality which is apparent of the face of record, for that reason, sufficient to ground an order extending time.

Finally, I am of the decided view that the applicant has adduced sufficient reasons for extension of time. Consequently, I grant **Theresia John**, the applicant, leave to institute an application for revision out of time. The applicant may institute the application for revision within 30 days from today. The applicant is granted costs.

To avoid endless litigation, I will proceed to determine costs under order 44 of the **Advocates Remuneration Order**, 2015 GN. No. 263/2015. It is on record that parties in this case, made appearance once and a second appearance will be for receiving the ruling. Consequently, I tax the costs at Tzs. 400,000/= which includes Tzs. 50,000.00 for appearing to prosecute that instant application, Tzs. 50,000.00 for prosecuting Misc. Land Application No. 48/2023 before this Court and instruction fees of Tzs. 150,000.00 in respect of each application.

I order accordingly.

Dated at Babati this **16th** day of **August**, 2023.



A handwritten signature in black ink, appearing to read 'John R. Kahyoza', is written over a horizontal line.

John R. Kahyoza,
Judge

Court: Ruling delivered in the presence of the respondent and in the absence of the applicant and his advocate. Ms Fatina (RMA) is present.



A handwritten signature in black ink, which appears to be 'John R. Kahyoza', is written above a solid horizontal line.

John R. Kahyoza,

Judge

16. 08.2023