

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 139 OF 2023

(Arising from Inspection No.9 of 2015 and Probate and Administration Cause No. 15 of
1971)

NYEMBO KIGOMBEY.....APPLICANT

VERSUS

MWINYIJUMAA RAMADHANI MZEE..... 1ST RESPONDENT

**MWANAAASHA MWINYIJUMA KAMBI (as Administratrix
of the Estate of the late Mwinyijuma Kambi)2ND RESPONDENT**

RULING

Date of last Order: 10th August, 2023

Date of Ruling: 25th August 2023

E. E. KAKOLAKI, J.

In this application this court is called upon by the applicant to grant him extension of time within which to file revision against the ruling of Ilala District Court in Inspection No. 9 of 2015, allegedly delivered on 17th May, 2021. Other prayers are costs of the suit and any other reliefs this Court may deem fit and just to grant. The application is preferred under the provision section 14 of the Law of Limitation Act, [Cap 89 R.E 2019].

The grounds in support of the application as discerned from the affidavit duly affirmed by Nyembo Kigombey, the applicant are mainly two. One, that he was not aware of the decision in Inspection No. 9 of 2015 by the District Court of Ilala delivered on 17th May 2021, sought to be challenged before filing this application and second illegality of the said decision.

The background of this application as can be discerned from the applicant's affidavit goes thus; on 30th December 2017, the applicant executed a sale agreement of the property on plot No. 126, Block D Ununio Area at Kinondoni District, Dar es Salaam Region at the consideration of Tsh.30,000,000/= from the late Mfungeni Mohamed who had obtained it by way of gift on 17th March 2015, from his biological father the late Azizi Mohamed Dandalo, who also acquired the said land by way of sale from the 2nd respondent under her capacity as administrator of the estate of the late Mwinyijuma Kambi, the original owner of the suit property, the sale which was concluded on 9th December, 2014.

It is averment of the applicant that, after purchase of the said suit property in 2019 he erected a small building therein before he applied to the commissioner for Lands, Dar es Salaam Zone on 9th April 2020, for issuance of Certificate of Right of Occupancy in respect of the suit property. While

waiting for issuance of the Certificate of Right of Occupancy contends was summoned by the office of the Commissioner for Lands to appear on 26th November 2021 where he was informed that 1st respondent had also made an application for Certificate of Right of Occupancy in respect of the same suit property, thus was advised to bring the matter to court of law for determination of the true owner of the disputed property amongst them.

Following that piece of advice, the applicant immediately instituted Land Application No. 3 of 2021 in Kinondoni District Land and Housing Tribunal against the respondents here in claiming among other things to be declared lawful owner of the disputed property before it came into his knowledge through the amended Written Statement of Defence by the respondent of the existence of ruling in Inspection No. 9 of 2015 of 17th May 2021 (annexure NK-7), that had nullified the sale of the disputed property concluded between the 2nd respondent and the late Azizi Mohamed Dandalo. It is in the said ruling which the applicant claim not to be aware of contends was passed by Ilala District Court against his interest without being heard until when his advocate was served with amended WSD and passed the information to him, while advising him withdraw his application at Kinondoni District and Housing Tribunal and challenge the ruling in Inspection No. 9 of

2015 before the High Court since for not being a part to those proceedings which affected his rights, hence the present application for extension of time as time to file revision as time for applying for revision had already lapsed. Further to that, the applicant contends the ruling in Inspection No. 9 of 2015 is marred with illegalities and irregularities on the ground that, as a bonafide purchaser and in actual possession of the disputed property he was not heard before determination of the said case in the District Court.

The application has been strenuously opposed to by the respondents who filed their counter affidavits to that effect. The contention, as contained in their counter affidavit is that, it was not easy to inform the applicant about the existence of Inspection case No 9 of 2015 because he was not the party in the said case and further that, at time of determination of the case on 15th May 2017 he had not yet purchased the suit property as he purchased the suit property on 30th December, 2017 so it was hard for the trial court to know and predict the would be buyer of the suit property (applicant) to notify him so that he could be heard.

Disposal of the application took the form of written submissions, preferred consistently with the filing schedule passed by the Court on 26th July, 2023. The submission by the applicants were filed by Mr. Rajabu Mrindoko while

that of respondent were prepared by Mr. Frank Mposso, both learned advocates. The applicant enjoyed the usual privilege of submitting ahead of the respondent.

In support of the application, Mr. Mrindoko began by seeking leave of the court to adopt the contents of the affidavit in support of the application which contain grounds in support of the same. He then stated that, the reasons justifying applicant's delay in pursuing the intended revision are enumerated in paragraphs 9, 10, 11 and 12 of the applicant's affidavit in that, he was not made aware of the existence of the proceedings and decision in Inspection No. 9 of 2015 at Ilala District Court until February 2023. He said, in their counter affidavit respondents denied the applicants averment of not being aware of the said decision by relying on the letter issued by Commissioner for Land and another issued by the street office but in both letters there is no proof that the same were dully served and received by the applicant. And that, in absence of such proof it is fair and just for this Court to hold that the applicant was not aware of the existence of the decision in Inspection No. 9 of 2015 which culminated into deprivation of his ownership of landed property located on Plot 126 Block D Ununio Area. According to him, this

reason constitute a very good cause for the delay within the meaning of section 14 (1) of Cap 89.

Mr. Mrindoko went on submitting that, apart from the reason for delay, another factor which is worthy of consideration is the degree of diligence exhibited by the applicant as after being aware of the existing decision which affect his interest, he took prompt and diligence steps to pursue the matter. According to him, the degree of diligence shown by the applicant leaves no doubt that the applicant was serious in quest for justice. He supported his position by the case of **Michar Kweka vs John Eliafye** (1997) TLR 152 at page 153.

Another ground allegedly constituting good cause raised by the applicant and submitted on by Mr. Mlindoko is the illegality of the decision subject of the intended revision, which he argued if raised is sufficient reason for extension of time regardless of whether or not reasonable explanation has been given by the applicant. Reliance was placed on the case of **Principle Secretary Ministry of Defence and National Service Vs. Devram Valambhia** (1992) TLR 185 to support that stance. In trying to bring into picture the alleged illegality he argued that, the complained of decision was passed by Ilala District court without affording the applicant of the right to

be heard as bonafide purchaser and person in actual possession of the suit property. He supported his argument with the case of **Laurent Simon Assenga Vs. Joseph Magoso and Others**, Civil Application No. 50 of 2016 (unreported). Mr. Mlindoko implored the court not to close its eyes and bless the illegality which is apparent on the face of record. He took the view that, immediate intervention of this court is certainly needed to meet the very pressing need of justice of which the same cannot be done if extension of time is not granted. Thus, he prayed the court to grant the application.

In response, Mr. Mposso contended that, the applicant is complaining of the decision which is not fatal as even if the revision is to be allowed, he has no overwhelming chances to win since the same was delivered a year before he became the buyer of the disputed land. He clarified that, the ruling in Inspection No. 9 of 2015 was delivered on 29/12/2016 and the applicant bought the disputed property on 30/12/2017. And further that, in that decision it was the 1st respondent who had sued the 2nd respondent thus, in any case the applicant could not have formed party of the case as was neither the owner nor interested party over the said property by then.

On accounting for the delayed period he said, the applicant has not stated or shown sufficient reasons that delayed him in applying for revision from

the date of ruling for more than six years and 206 days as the ruling was rendered on 29/12/2016. To him there is nothing more than negligence on applicant's party. He added that, the applicant cannot challenge the decision of the case over the property which he never knew he would come to buy it later on, apart from seeking sympathy from this Court. To support his argument the Court was referred to the case of **Tanzania Fish Processors Ltd vs Eusto K. Ntagalinda**, Civil Application No. 41/2018 (unreported) as cited in the case of **Tanzania Zambia Railways Authority vs Gerald S. Movela**, Revision No. 451 of 2020 [2021] TZHCLD 311 at page 6.

Concerning the issue of illegality Mr. Mposso contended that, the same was not sufficiently demonstrated and justified by the applicant as it was stated in the case of **Tanzania Harbours Authority vs Mohamed R. Mohamed** [2003] TLR 76 at page 77, in which the court emphasized that, time will not be extended in every situation whenever illegality is alleged as an issue by the applicant. In concluding he submitted that, for the court to exercise its jurisdiction, the applicant had a duty to satisfy it from the moment he became aware of the fact that he was out of time, and that his conduct portrayed that he acted expeditiously and diligent in logging the application for extension of time as it was stated in the case of **Magnet Construction**

Limited Vs. Bruce Wallace Jones, Civil Appeal No. 459/2020 (CAT-Unreported). He finally pray the court to dismiss the application with cost for want of merit.

In a short rejoinder Mr. Mrindoko reiterated his submission in chief and maintained that the applicant was in possession of the disputed property since 2017 and that, it was until February 2023 when he noted through respondents' amended written statement of defence of the decision passed by the lower court against his interest without him being heard. He insisted that, even the applicant's predecessors in title over the disputed land the late Mfungeni Mohamed and his late father Azizi Mohamed Dandalo were not parties to those proceedings. He maintained that, the delay in applying for revision was due to lack of knowledge on existence of the dispute over ownership of the suit property. He then reiterated his prayers as prayed in submission in chief.

I have keenly considered the rivalry submission by the learned counsel for the parties herein and evidence adduced in the affidavit and counter affidavit in support and against the application. The issue which calls for the court's determination is whether the applicant has demonstrated sufficient cause to

warrant this court extend him time within which to file the revision application.

Undoubtedly, grant of an application for extension of time is a judicial discretion, exercised depending on surrounding circumstances, with the aim of achieving real and substantial justice between parties. However, the discretion is exercised upon the applicant advancing good or sufficient cause for delay, as each day of delay must be accounted for in accounting for the delay. See the cases of **Lyamuya Construction Company Ltd vs. Board of registered trustees of young women's Christian association of Tanzania**, Civil Application No. 2 of 2010 (CAT (Unreported) **The International Airline of the United Arab Emirates vs. Nassorror** Civil Application No 263 of 2016, CAT at Dar es Salaam (Unreported). It is also trite law that, illegality if successfully advanced as a ground constituting good cause for extension of time in performing certain action, then all other factors such as accounting for days of delay are not measured. See the cases of **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185; and **VIP Engineering and Marketing Limited and Three Others Vs. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 CA (Unreported)

In **VIP Engineering and Marketing Limited and Three Others** (supra)

Court of Appeal deliberately stated:

*“It is, therefore, **settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay.**”*

(Emphasis supplied)

It is however worthy noting that, it is not enough for the applicant to allege illegality of the decision sought to be impugned as the law requires the same to be apparent on the face of record and not one to be discovered through long drawn argument or process. This was the position of the Court of Appeal in the case of **Lyamuya Construction Company Ltd** (supra), where the Court had the following to say:

*“Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Valambia’s case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, **I would add that it must also be apparent on the face of record, such as the question of***

jurisdiction; not one that would be discovered by a long-drawn argument or process. "[Emphasis supplied]

In the present application as alluded to above the alleged illegality respect of the impugned ruling is denial of applicant's right to be heard in the case Inspection No. 9 of 2015 for being bonafide purchaser and party in actual possession of the land, the assertion which in my view if proved is of sufficient importance as contemplated by the law. On the other side, Mr. Mposso is of the contrary view that, there is no such illegality as the applicant cannot challenge the said decision which was delivered before he had even contemplated to buy the said disputed land, hence at any rate could not have been made a party to the case. I had time to pass through the said decision intended to be displaced as annexed in annexure NK-7 to the affidavit, in order to find out whether applicant's contention is meritorious. In essence I tend to agree with Mr. Mposso's proposition that the said illegality can be hardly seen for not being apparent on face of record as per the requirement of the law. I so do as glancing at the impugned decision it is visibly noted that, **one**, the same was between the 1st respondent and the 2nd respondent as neither the late Mfungeni Mohamed who allegedly sold the said property to the applicant nor his biological father the late Azizi Mohamed Dandalo were parties to it, for the applicant to at least claim locus therefrom

to challenge the decision. **Secondly**, the decision was delivered on 29/12/2016, the period which undoubtedly the applicant had even not contemplated to buy the said property and not 17th May 2021 as he would want this court to believe. Under the circumstances where the applicant had not even purchased the suit property when the sought to be impugned ruling was delivered, there is no way he would have been made party to the proceeding in Inspection No. 9 of 2015 and be entitled to the right to be heard before the court rendered its decision, the right which he now seeks the door through this application to pursue. In my unflustered view that, under the circumstances the alleged illegality by the applicant cannot be said to be apparent on the face of record as it would require a long-drawn argument or process to discover it if any exists.

It is my conviction that the claim of illegality by the applicant does not pass the requisite threshold constituting good cause for extension of time as per the case of **Principal Secretary, Ministry of Defence and National Service** (supra).

With the above findings, I find it to be superfluous to determine other grounds in support of this application, as even if they are found to constitute good cause justifying grant of extension of time for filing the revision, the

extension will not lead the applicant to land to a safe destination for want of locus to pursue the said revision. In the event, I take the view that sufficient cause has not been demonstrated to trigger the Court's discretion to grant the sought prayers by the applicant.

Consequently, the application fails and it is hereby dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 25th August, 2023.



E. E. KAKOLAKI

JUDGE

25/08/2023.

The Ruling has been delivered at Dar es Salaam today 25th day of August, 2023 in the presence of Mr. Emmanuel Hayuka, advocate who is holding brief for advocate Rajabu Mrindoko for the applicant, and Mr. Oscar Msaki, Court clerk and in the absence of the 1st and 2nd respondents.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

25/08/2023.

