

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 446 OF 2023

(Originating from Matrimonial Cause No. 24 of 2116 of the District Court of Ilala at Dar
es salaam dated 09/05/2017 before Hon. Mujaya, RM)

EMMANUEL M. UREMBO.....APPLICANT

VERSUS

EMILIANA N. NYONI.....1ST RESPONDENT

ARRON LOTH MAKULU.....2ND RESPONDENT

RULING

Date of Last Order: 28/08/2023.

Date of Ruling: 08/09/2023.

E.E. KAKOLAKI, J.

The applicant herein is seeking this Court's indulgence to extend him time within which to file an application for Revision against the Judgment and Decree of the District Court of Ilala at (Kinyarezi) Dar es salaam in Matrimonial Cause No. 24 of 2016 handed down on 09/05/2017, orders for cost of the application and any other relief which the Court may deem fit to grant. The application is preferred by way of chamber summons under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2019] (the LLA),

supported with two affidavits sworn by **Emmanuel M. Urembo**, the applicant and **Marietha Loth Mollel**, applicant's advocate, stating the grounds as to why this application should be granted. These are **One** that, the applicant was not made aware of the sought to be impugned decision for not being a party to the case so that he could raise or declare his interest on the farm located at Kigambo allegedly awarded to the 1st respondent in Matrimonial cause until 11/12/2020, **second**, the applicant was busy in court corridors challenging dispossession of his land owned jointly with the 2nd respondent though on wrong paths and **third**, illegality of the decision sought to be challenged.

When served with the application the 1st respondent strenuously resisted its merit when filed her counter affidavit to that effect, inviting this Court to dismiss it for want of merit. It was respondent's response that, there was no proof that the applicant jointly owned the disputed land as the 2nd respondent never raised that issue in Misc. Civil Application No. 262 of 2017, when seeking extension of time within which to file an application to set ex-parte judgment against him.

When the matter was called on for hearing, both parties appeared represented and were heard viva voce as the applicant hired the services of

Ms. Marietha Loth Mollel while the 1st and 2nd respondents were represented by Mr. Emmanuel Richard Machibya and Peter Bana, respectively, all learned counsel.

Before venturing into business of determining the merit or otherwise of this application, I find it imperative to adduce its background albeit so briefly. The 1st respondent herein petitioned for divorce against the 2nd respondent before the District Court of Ilala in Matrimonial Cause No. 24 of 2016, that ended up dissolving their marriage with division of matrimonial properties, one of which was the farm located at Kigamboni, awarded to the 1st respondent in its ex-parte judgment handed down on 09/05/2017. It appears after failed attempt by the 2nd respondent to set aside the said ex-parte judgment, the 1st respondent started to develop the land before the appellant noted on 11/12/2020 when visited the said land measuring 5.1 acres purchased in the year 2012, through two sale agreements and owned jointly with the 2nd respondent that, it was invaded and developed without his knowledge, only to be informed by the village authority that the development were made by the 1st respondent who claimed ownership through court order. According to the applicant the said land was purchased for consideration of Tshs. 20,300,000/ (annexures EU-1, 2 and 3) in which

he paid Tshs. 13,300,000/ while the 2nd respondent paying the remaining amount of Tshs. 7,000,000/ thus ownership of 66% and 34% of the land, the fact which was not disclosed to this Court before the award of that land to the 1st respondent by the District Court of Ilala. And that, in so doing the trial court never gave description of the said awarded farm to the 1st respondent apart from merely referring it as the farm at Kigamboni. Further he alleges the decision is tainted with illegality as it does not specify or give description of the farm awarded to the 1st respondent and that while the judgment is referring to Matrimonial Cause No. 24 of 2016 its decree reads a different case number of Civil Appeal No. 24 of 2016.

It is averred further by the applicant that, several fruitless attempt were made by him to challenge dispossession of his land as he filed a case in the District Land and Housing Tribunal (DLHT) for Temeke Land Application No. 41 of 2021 on 15/02/2021 before it is was withdrawn on 09/04/2023 and later on referred the matter to Somangila Ward Tribunal at Kigamboni for land settlement, the tribunal which that issued him with Certificate of Non-settlement of land dispute on 06/06/2023. Undaunted, the applicant preferred objection proceedings before the District Court of Ilala but the same could not survive as was dismissed for being filed out of time after the

execution was already done and satisfied, hence the present application for extension of time to file revisional proceedings as his last hope.

In application of this nature brought under section 14(1) of LLA, the applicant has to demonstrate good cause for this Court to exercise its discretion judiciously either to grant the application or not. As to what amounts to good cause there is no fast and hard rule as it depends on the materials advanced before the court or a number of factors to be considered such as *whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant*. See the cases of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 and **. Oswald Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (CAT-unreported). And in so doing the applicant has to account for each and every day of delay. See the cases of **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007 and **Sebastian Ndaula Vs. Grace Rwamafa**, Civil Application No 4 of 2014 (both CAT-unreported). It is to be noted that, even when the applicant fails to account for each delayed day, illegality of the decision sought to be impugned if successfully raised and established constitute good ground for

extension of time. However, the law requires that such alleged illegality must be apparent on face of record not the one to be drawn by long argument or process. See the cases of **The Principal Secretary, Ministry of Defence and National Service Vs. Dervan P. Valambhia** (1992) TLR 387 (CAT), **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (both CAT-unreported). In the case of **Ngao Godwin Losero** (supra) the Court of Appeal emphasized that:

"...the illegality of the impugned decision should be visible on the face of record."

With the above principles in mind I now move on to consider the submission by the parties on the merit and demerits of this application. Submitting in support of the application Ms. Mollel notified this Court that, the applicant who co-own with the 2nd respondent the land at the ratio of 66% and 34% respectively as per annexures EU- 2 and 3, enjoyed peaceful ownership until 11/12/2020 when he learnt that there were unusual developments in his land measuring 5.1 acres when visited it, only to be informed that the same were made by the 1st respondent who claimed titled from the Court award

in Matrimonial Cause No. 24 of 2016 between her and 2nd respondent, as it was declared a matrimonial property and awarded to her. And that, his attempt to challenge that decision or award through Land Application No. 41 of 2021 filed before the Temeke DLHT on 15/02/2021 could not bear fruits as he had to withdraw the same on 09/04/2023 for want of competence before he referred the matter to Somangila Ward Tribunal which also disappointed him when issued him with a Certificate of Non-settlement of land on 06/06/2023, thereby tirelessly preferred objection proceedings before the District Court of Ilala which was dismissed for being filed out of time. It was her submission therefore that, the delay by the applicant in filing this application is not associated with negligence on his part as he was busy in court chasing his rights. To her this application is the only remaining hope to the applicant as he was not aware of the existence of ex-parte judgment between the 1st and 2nd respondent for not being a party to that case, hence denied of the right to be heard on his interest over the land before the award was made to the 1st respondent as there was also no proof of her contribution over the said land. On denial of the right to be heard as ground for extension of time she relied on the case of **Moh'd Bakari Ramadhan**

and Another Vs. Mwanasheria Mkuu wa Serikali Zanzibar, Civil Application No. 107/15 of 2019 (CAT-unreported).

In another ground Ms. Mollel contended that, the decision sought to be challenged is tainted with illegality as mere reference of the land awarded to the 1st respondent as **the farm at kigamboni** without any specific description or particulars of the plot would lead to taking possession of any land of any person at kigamboni without being heard, like that of the applicant. And that, even the Judgment in Matrimonial Cause No. 24 of 2016 differs with the decree which is reading Civil Appeal No. 24 of 2016. With all those noted apparent illegalities in the judgment and other grounds as demonstrated, in her submission Ms. Mollel invited this court to grant the application contending that, sufficient grounds have been demonstrated warranting this Court to exercise its jurisdiction judiciously.

On his side Mr. Machibya having adopted the contents of 1st respondent's counter affidavit intimated to the Court from the outset that, this application is wanting in merit as the applicant attempted to file the Land Application before DLHT for Temeke but withdrew the same before his objection proceedings in the District Court of Temeke was dismissed. According to him, since the applicant withdrew his Land Application with leave to refile he

should stick to that route since preference of this application is a clear manifestation of applicant's lack of diligence in pursuing his rights for relying on wrong advice of his advocate, which does not constitute sufficient ground for extension of time. In his view, the applicant has failed to account for each and every day of delay before filing this application and did not specifically state as to why he failed to challenge the decision since 2020 when he became aware of the same until 2023. On the ground of illegality he said it is not true that the same exists in the decision sought to be impugned. It was therefore his submission that this application is bound to fail.

Mr. Bana for the 2nd respondent after adopting the counter affidavit informed the court that, the 2nd respondent is conceding to the application. He said the reasons as to why they are conceding are **one** that, the applicant was denied of his right to be heard before his land was purportedly awarded by the Court to the 1st respondent, the right which is fundamental and Constitutional, hence constituting an illegality which is itself is a sufficient ground for extension of time as held in the case of **Moh'd Bakari Ramadhan and Another. Secondly** he argued, at all times since when he became aware of interference of his land the applicant was in court corridors

in pursuit of his right, the act which is considered as good cause for extension of time as held in the case of **Tanzania Rent A Car Limited Vs. Peter Kimuhu**, Civil Reference No. 28 of 2019 (CAT-unreported). **Lastly** was on the fact that, withdrawal of Land Application which cause was wrongly taken does not bar the applicant from pursuing revision in which extension of time is sought for. In view of the above Mr. Bana implored this Court to grant the application as the applicant has demonstrated sufficient reasons for delay in filing the application as well as illegality of the decision as independent ground.

In rejoinder Ms. Mollel had nothing to add apart from reiterating what she had submitted in her submission in chief.

I have taken time to peruse the affidavits, counter affidavits of both for 1st and 2nd respondents and reply to counter affidavit. I have as well accorded the deserving weight both parties' contending submission with view of searching the truth as to whether the applicant has demonstrated sufficient or good cause warranting this Court grant him extension of time. As per the sale agreements and pay-in slips as annexures EU-1, 2 and 3 in paragraphs 3, 4 and 5 of the applicant's affidavit, there is no dispute that applicant has vested interest in the land measuring 5.1 acres owned jointly with the 2nd

respondent. It is also uncontroverted fact that, the applicant was not a party to Civil Case No. 24 of 2016 involving the 1st and 2nd respondents before the District Court of Ilala awarded the piece of land to 1st respondent on 09/05/2017 christened as **one farm at Kigamboni** without assigning any specific identifiable mark/particulars or address in Kigamboni area such as plot number if any, street or village and ward names. It is also undisputed fact that, the applicant became aware of unusual developments of the said land on 11/12/2020. The sub-issue then is whether he has accounted for the delayed days from the time when he became aware of invasion of his land until allegedly on 11/12/2020 when this application was filed on 21/08/2023. It is in his affidavit at paragraphs 8,9,10,11,12 and 13 that, upon becoming aware of the unusual developments in his land, he made an inquiry to the village authority and engaged an advocate to peruse the filed in the District Court of Ilala to establish the legality of the ex-parte judgment that awarded the said land to 1st respondent before he preferred the Land Application No. 41 of 2021 on 15/02/2021 two (2) months passed, the application which was later on withdrawn on 09/04/2023. As submitted by Mr. Machibya the submission which I subscribe to, the applicant did not state the reason as to what delayed him to file the Land Application as it could not take him two

months to communicate the village authority and peruse the court file. This period of two (2) months I find is not accounted for.

Another period I find was not accounted for is the time from 09/04/2023 when the Land Application was withdrawn before the Temeke DLHT up to the undisclosed time/date for lodging his complaint to Somangila Ward Tribunal Kigamboni District before the certificate of non-settlement of land dispute was issued on 06/06/2023, which is also two (2) months as per paragraph 14 of the affidavit. Again the applicant did not state in paragraph 15 of the affidavit as to when the objection proceedings in the District Court of Ilala challenging attachment of the farm at Kigamboni was filed from the time of issue of certificate of non- settlement by the Ward Tribunal, as the only stated date is 16/08/2023 when the objection proceedings were dismissed, which is more than two months from the date of issue of certificate. In view of the above I am convinced and therefore in agreement with Mr. machibya that, the applicant had failed to account for each and every day of delay as required by the law.

As regard to the ground of technical delay as good ground for extension of time particularly when the applicant establishes to the Court to have for spent time in court corridors in pursuit of his rights, I am at one with Mr.

Bana that, that is the settled law as it was adumbrated in the case of **Tanzania Rent A Car Limited** (supra) when citing the case of **Mary Mchome Mbwambo and Another Vs. Mbeya Cement Company Limited**, Civil Application No. 271/10 of 2016 (CAT-unreported) when the Court of Appeal said:

"...where an applicant has been in court's corridors in pursuit of his rights and consequently delays to take appropriate steps, that pursuit may constitute good cause for the purposes of extension of time."

While I am in agreement with above principle that, spending time in court corridors though pursuing wrong course may constitute good cause for extension of time, I hold a view that, that alone without demonstrating sufficient evidence that, in pursuing those wrong courses applicant acted promptly in filing them in court, he cannot be entitled to benefit from this ground. The reasons I am taking that position is so obvious in that, for the applicant to benefit from that ground the court has to consider whether or not the courses taken were so done promptly and whether or not there was lack of diligence on his part.

In this matter as demonstrated above the applicant's affidavit is barren of facts as to when he lodged the complaint to the Ward Tribunal for Somangila and when were the objection proceedings filed in the District Court for this Court to determine whether he acted promptly or not to file them. In absence of that evidence, I refrain from accepting the invitation by Mr. Bana to consider the time spent by the applicant in court corridors as ground for extension of time.

Next ground for consideration is the right to be heard in which the applicant claims was denied in this matter when his land was awarded to the 1st respondent by the District Court of Ilala in Matrimonial Cause involving the 1st and 2nd respondent in which he was not a party. While I am in agreement with Mr. Bana that, denial of the right to be heard as demonstrated in the case of **Mary Mchome Mbwambo and Another** (supra) cited in **Tanzania Tent A Car Limited** (supra) as good ground for extension of time, I do not buy his proposition that the principle applies in the present matter. The reason I so viewing is simple to tell as while in that case the applicant who was a party to the case was denied of the right to be heard on merit when his application was dismissed instead of being struck, in the present matter the applicant was never made a party to the case in which

extension of time is sought to assail its decision. Since he was not a party he cannot be heard claiming reliance on that ground that, he was denied of the right of hearing to the case. The ground therefore fails.

Lastly is the ground of illegality of the decision. It is the law as demonstrated in **Lyamuya Construction Company Ltd** (supra), **Ngao Godwin Losero** (supra) that, it is not enough to merely allege illegality of the decision sought to be impugned as the same has to be apparent on face of record. I am also alive to the fact that my duty in this application is not to determine whether the raised illegality is well constituted or not, but rather to satisfy myself that the same is apparent on the face of record. A glance of an eye to the awarded relief in the sought to be impugned judgment particularly non description of the awarded farm of Kigamboni to the 1st respondent which its execution might bring confusion, has sufficiently convinced this Court that, the ground of illegality has been established by the applicant to warrant grant of extension of time regardless whether each delayed day has been accounted for.

All said and done, I find the application has merit and proceed to grant the same. Time is therefore extended to the applicant for 14 days within which

to file application for revision to this Court against Ex-parte Judgment of the District Court of Ilala in Civil Case No. 24 of 2016 dated 09/05/2017.

Given the nature of the case, I order each party to bear own costs.

It is so ordered.

Dated at Dar es Salaam this 08th September, 2023.

E. E. KAKOLAKI

JUDGE

08/09/2023.

The Ruling has been delivered at Dar es Salaam today 08th day of September, 2023 in the presence of Mr. Marietha Mollel, advocate for the applicant who is also holding brief for advocate Peter Bana, for the 2nd respondent, the applicant in person, Mr. Emmanuel Richard Machibya, advocate for the 1st respondent, and Mr. Oscar Msaki, Court clerk.

E. E. KAKOLAKI

JUDGE

08/09/2023.

