IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB- REGISTRY OF MWANZA

AT MWANZA

MISC. LAND APPLICATION NO.86 OF 2023

(From District Land and Housing Tribunal for Mwanza, Application No. 158 of 2018)

ISAMILO PLAZA COMPANY LTD----------APPLICANT

VERSUS

MWAJUMA MUSSA----------1ST RESPONDENT

TELESPHORY MALIBATE----------2ND RE3SPONDENT

RULING

Sept. 21st & 29th, 2023

Morris, J

The present application before this Court is the fourth attempt by the resolute applicant in pursuit of justice. This time round, he is moving the Court to extend time for him to, once again, challenge the decision of the District Land and Housing Tribunal for Mwanza (DLHT) by way of revision. The to-be impugned decision is under DLHT Application No.158 of 2018. The applicant and the two respondents filed respective affidavit and opposing affidavits sworn by Venkatakrishna Mohen together with Mwajuma Mussa and Telesphory Malibete respectively.

The brief history of this matter is undoubtedly comprehensible. The 1st respondent filed land dispute no.158 of 2018 at the DLHT against the applicant and 2nd respondent. The matter was heard *ex-parte* against the 2nd respondent. The 1st respondent was declared to be the lawful owner of plot No. 65 Block 'B' Barewa Road, Mwanza Municipality (the 'suit property/land'). Therefrom, the applicant appealed to this Court vide Land Appeal No. 30 of 2019. It did not sail through. Instead, it was dismissed at initial stages for having been filed out of time. Though he was disgruntled, he let matters rest there.

The foregoing inaction notwithstanding, the applicant applied for extension of time to appeal vide this Court's Misc. Land Application No. 64 of 2020. It was allowed. Consequently, he filed Land Appeal No. 10 of 2021. He was not as lucky this time. The Court dismissed his afresh-filed appeal on 30/6/2023 for being *re-judicata*. As it was the case for the previous appeal which was dismissed for being time barred, he did not escalate the challenge higher than that. He, once again, let go any available recourse(s) against the second dismissal of his appeal. Nonetheless, he is now using his summative

efforts to pursue extension of time success of which he intends to file revision proceedings thereafter.

During hearing each party was represented by own advocate. Messrs. Charles Kiteja and Gasper Charles appeared for the applicant. Further, advocates Adam Robert and Stephen Mhoja acted for the 1st and 2nd respondents respectively. The affidavit and counter affidavits were adopted by each respective lawyer as part of the submissions. However, parties' additional submissions can be summarized as follows: Mr. Kiteja submitted that the Tribunal's judgement sought to be revised later is tainted with serious illegalities. He named four major ones. **One**, that the matter was determined by the DLHT without pecuniary jurisdiction for the matter in dispute was valued at about Tshs, 500,000,000/=.

Two, the DLHT nullified the land register without jurisdiction (pages 2 and 26 of the decree and judgement respectively). **Three,** the Registrar of Titles was not joined as a necessary party; and **four**, general damages of Tshs. 50,000,000/= was awarded to the 1st respondent without being pleaded. I was referred to ***Hassan Abdulhamid v Erasto Eliphace***, Civil Application No. 402 of 2019, ***Treasury Registrar & Others v Hadrian B.***

Chipeta, Misc. Land Application No. 438 of 2022; ***Egbar Ebrahim v Alexander K. Wahyungi***, Civil Application No. 235/17 of 2020; and ***Emmanuel Eliazaray v Eziron Nyabakari***, Misc. Land Application No. 566 of 2021 (all unreported) to reinforce the argument that such damages should have been pleaded.

It was further submitted by Mr. Kiteja that, the days of delay were accounted for. He cited paragraph 17 of the affidavit and argued that, for a considerable time, the applicant was prosecuting appeals and applications with the view of challenging the DLHT's decision. He added that the latest proceedings were terminated on 30/6/2023. And that, thereafter, the applicant applied for and got the of judgement on 10/7/2023. Further, he spent some days to prepare the current application. That is, on 14/7/2023 he filed this application online but the same was admitted before he successfully resubmitted it on 28/8/2023.

Finally, it was also submitted for the applicant that revision is a remedy which may be pursued when there is illegality. The applicant's counsel relied of courts' holdings in the cases of ***Mansoor Daya Chemicals Ltd v NBC***,

Civil Application No. 464/16 of 2014; and ***Ali Chamani v Karagwe District Council***, Civil Appeal No. 148/2020 (both unreported).

In reply it was the submissions of Mr. Adam for the 1st respondent that, the illegalities stated by applicant were previously used to secure extension of time to appeal. Consequently, he secured such enlargement of time in Misc. Land Application No. 64 of 2020. In his view, thus, Mr. Adam submitted that the same grounds cannot be reused in pursuit of another remedy. That is, as the applicant had exhausted the envisaged remedy thereof, and he cannot rely on same grounds anymore. The Court was referred to ***Edward Masatu Mwizarubi v Tanzania Fish Processing Ltd***, Civil Appeal No. 13 of 2010 (unreported).

On his part, the 2nd respondent's counsel; Mr. Mhoja, did not oppose the application. He hastily remarked that he supported the application because the DLHT decision was not a good-and-just law. In rejoinder, it was submitted by the applicant that illegality was raised by the Court *suo motu* prior to extending time on Misc. Land Application No. 64 of 2020.

From the above contentious arguments, the Court will determine the application by answering one major question: *whether or not grounds*

advanced by the applicant (illegality on DLHT's decision and technical delay) *suffice in making this court to allow the application*. I will analyze one ground at a time. However, before embarking on such exercise, I do not feel misplaced to comment of the 2nd respondent's concession to the application. It is the law that, even for an uncontested application, the court is obliged to analyze the strength of advanced grounds before extending time or denying the prayer. The objective is to resolve whether such grounds suffice for the Court to judiciously invoke its discretionary powers. Hereof, I have ***Denis T. Mkasa v Farida Hamza (administratrix of the estate of Hamza Adam) & Another***, Civil Application No. 407/08 of 2020 (unreported) in mind for reference.

I now turn to the alleged illegality. It was submitted for the applicant that the DLHT acted without jurisdiction (pecuniary and rectification of land registry); that there was misjoinder of the Registrar of Titles; and damages were awarded without being pleaded and prayed for. The defence, however, submitted that the alleged illegalities had already been exhausted by the applicant. Despite such efforts of the rivalry parties, I will address this point

sparingly. The rationale is obvious: so that the Court does not delve into the merits of the envisioned revision proceedings.

Let me start by recording my agreement with the applicant's counsel that illegality apparent on impugned court's proceedings and/or outcomes therefrom presents a sufficient cause for the grant of an application for extension of time. A plethora of authorities, in addition to the ones cited by the applicant's advocate, includes: ***Khalid Hussein Muccadam v Ngulo Mtiga (A Legal Personal Representative of the Estate of Abubakar Omar Said Mtiga) and Another***, Civ. Appl. No. 234/17 of 2019; ***Shabir Tayabali Essaji v Farida Seifuddin Tayabali Essaji***, Civ. Appl. No. 206/06 of 2020; ***Hassan Ramadhani v R***, Crim. Appeal No. 160 of 2018; ***Eqbal Ebrahim v Alexander K. Wahyungi***, Civ. Appl. No. 235/17 of 2020; ***Ngolo S/O Mgagaja v R***, Crim. App. No. 331 of 2017; ***Lyamuya Construction Co. Ltd. v Board of Trustees of Young Women's Christian Association of Tanzania***, Civ. Appl. No.2 of 2010; and ***Lycopodium (T) Ltd v Power Board (T) Ltd and Others***, Comm. Appl. No. 47 of 2020 (all unreported).

However, in determining the merit of this ground (illegality) in the present application, the Court is guided by various aspects not in dispute. **Firstly**, the DLHT delivered its judgement on March 15th, 2019 and the present application was filed on August 28th, 2023. That is, about four and a half ($4^1/_2$) years after delivery of the judgement. **Secondly**, this application was filed after failure of two appeals before this Court. Both appeals emanated from the same DLHT's proceedings and were preferred by the applicant herein. **Thirdly**, the outcomes of the two appeals were not challenged further. **Fourthly**, upon allowing this application, the Court will pave way for the applicant to commence revisionary proceedings against the decision against which he had unsuccessfully attempted to appeal. That is, in both attempts, he was pursuing a due appellate course available against the DLHT decision.

The applicant's revitalized enthusiasm to seek justice notwithstanding, for him to benefit from the advanced ground of illegality herein; various conditions must be fulfilled. **One**, predominantly, the point of law constituting illegality must be of sufficient significance to the public. **Two**, it must be a point which is apparent on the face of the record; **Three**, it should

be both discoverable and determinable without a long-drawn arguments or processes. **Four**, the alleged illegality should be able of being cured by the envisaged proceedings; and **five**, it must meet the long-laid legal threshold. The cases of ***Lyamuya Construction*** (*supra*) and ***Iron and Steel Limited v Martin Kumalija and 117 Others***, Civil Application No. 292/18 of 2020 are of valuable authority in this regard.

Vide the envisaged revision, the applicant wishes to move this Court to put back in appropriate squares the jurisdiction of the DLHT which was wrongly exercised hereof, on the one hand. Further, the Court will be invited to interrogate the unjust effect which was brought about omitting to join the necessary party in the DLHT proceedings. Indeed, I hold that the issue of jurisdiction of the court is not a matter to be ignored. In law, when the court/tribunal acts without jurisdiction all its proceedings and decisions therefrom become a nullity. Moreover, non-joinder of necessary party into the proceedings may also be fatal especially when the execution of the resulting order becomes impossible in the absence of such party. However, such for-and-against arguments are not for this Court to entertain at this

stage. As the adage will express such position, it is a cup of tea for another morning! It is, thus, left at that.

In this matter at hand the applicant delayed on filing Land Appeal No. 30/2019. He filed it without prior application for extension of time. After dismissal, he made a U-turn by applying for extension of time. Thereafter, he filed an appeal which was found to be *res-judicata*. None of the outcomes of two aborted appeals of this Court has been challenged in the Court of Appeal. The blatantly available recourses at the disposal of the applicant remain in hibernation. By this over-four-year late strategy, the applicant anticipates to activate another parallel impugnation against the DLHT decision. If the same approach were to be a success, the applicant will be placed in a position of riding two horses at a time.

That is, he will have the abandoned appellate and revision proceedings of this Court. It will be illegal. The law does not allow 'riding two horses at the same time'. Doing so, amounts to abuse of court process. I am guided by ***Hector Sequiraa v Serengeti Breweries Limited***, Civil Application No. 395/18 of 2018; and ***The Registered Trustees of Masjid Mwinyi v***

Pius Kipengele and 5 others, civil revision No. 2 of 2020 (both unreported).

Further, having exhausted his right to appeal, the envisaged revision proceedings is potentially contentious. Without overly repeating myself, for illegality to be considered in extending time; the same should capable of being pursued successfully and must be pursuable without excessive protraction. It is the settled principle of law that appellate and revisionary reliefs cannot be pursued simultaneously; or the latter in lieu of appeal, unless there are glaring exceptional circumstances. Be as it may, depending on the outcome of such contention, the prospective revision hereof is potentially argumentative and is likely to introduce another illegitimate course or record.

It is cardinal law that the illegality will only be used to extend the time when alleged illegality will be addressed in the intended appeal/revision. In ***Joyce Joram Lemanya v Patricia Patrick Lemanya & Another***, CoA Civil Appl. No. 430 of 2021 (unreported); and ***Iron and Steel Limited v Martin Kumalija and 117 Others***, (*supra*) illegality was held as not being

a permissive ground in all cases of parties' tardiness. Laying it a principle in line with the present impunctuality, the Court in the latter case held at page 18, *inter alia*, that: -

> *"…illegality is not a panacea for all applications for extension of time. It is only in situation where, if extension sought is granted, that illegality will be addressed…"*

In my considered view, as the applicant's disgruntle with previous unsuccessful appeal(s) at this Court is capable of being heightened further to the Court of Appeal, the recourse which the applicant is snubbing; the strategy to ignite another parallel channel of litigation is unjustified. I, probably, should also state it here that, the essence of setting the time limits in law is, among other objectives, to promote the expeditious dispatch of justice [***Costellow v Somerset County Council*** (1993) IWLR 256]; and to provide certainty of timeframe for the conduct of litigation [***Ratman v Cumara Samy*** (1965) IWLR 8]; and laying down the foundations of inevitability of litigation outcomes. Consequently, time limiting and finality of litigation work in the advantage of proper management of resources; most

important of which are time and finance. Therefore, I find the 1st ground with no attendant merit. I accordingly disallow it.

The second ground relates to technical delay. The applicant deposed and submitted that he was late due to prosecuting other cases between parties herein, proceedings of which came to an end on 30/6/2023. It is cardinal law that, the fact that the applicant for extension of time was prosecuting other proceedings which were later on found incompetent must be taken into account. I fully subscribe to such principle. This position is also stated in ***Fortunatus Masha v William Shija and Another*** [1997] TLR 154; and ***Mathew T. Kitambala v Rabson Grayson and Another***, Criminal Appeal No. 330 of 2018 (unreported). Indeed, the applicant would benefit from the subject technical delay principle subject to the analysis below.

The foregoing position of the law on technical delay, notwithstanding, I am disinclined to state that the stated technical delay should act as a hideout of professional negligence, incompetence, or a vehicle for delaying justice. I will demonstrate my line of loathness. In the matter at hand, the two applicant's appeals were dismissed for being out of time and *res-judicata*

respectively. The applicant has, in such proceedings, enjoyed the stewardship of legal professionals; and officers of the court, to be precise. The law enjoins litigants to act diligently. More so, when they are being represented, parties are less expected to commit awful or hopeless mistakes by litigating in wrong fora for the sake of it.

It should be noted further that, neither ignorance of the law nor counsel's mistakes, constitute a good cause for extension of time. See, for instance, ***Bariki Israel v Republic***, Criminal Application No. 4 of 2011; ***Charles Salungi v Republic***, Criminal Application No. 3 of 2011 (both unreported); and ***Umoja Garage v National Bank of Commerce*** [1997] TLR 109. There is an obvious philosophy for such stern restriction. **Firstly**, the advocate being the officer of the court, is expect to act diligently enough to assist it in dispensation of justice. **Secondly**, to condone qualified legal professionals to make awful mistakes and/or act without certainty of the position of law; is to prejudice the public which banks their ubiquitous trust with the lawyers.

Thirdly, to allow advocates to pursue incompetent causes in courts of law and go away with that (by gaining extension of time for the right course

later) makes litigation overly costful and time consuming at the expense of their clients. **Fourthly**, lawyers to wrongfully litigate in courts (in some instances, repeatedly) is susceptible to put the otherwise noble legal profession in an unjustifiable disrepute. In my view, therefore, the technical delay doctrine should be sparingly considered on case-to-case basis.

In addition to the above analysis and reasoning, even with invocation of the technical delay principle, the applicant must account for each day of the delay. Reading from the affidavit supporting the application, the Court records plentiful discrepancies in this regard. I will account a few basic ones. **One**, under paragraph 17 (b), (c) and (e) thereof, it is deposed that the applicant obtained copy of the ruling on 10.07.2023 (though it is dated 30.06.2023); spent time between 11.07.2023 and 19.07.2023 preparing the application herein; but filed the same on 14.07.2023.

Examining such chronology, it becomes evident that the application was filed (on 14.07.2023) before it was fully prepared to completion (on 19.07.2023). That is, assuming it was indeed filed on 14.07.2023; then, from 15.07.2023 to 19.07.2023, the applicant is not disclosing what transpired in regard of the application. **Two**, it is alleged that the initial filing was effective

14.07.2023 but the system deregistered the application. There is, however, no corresponding deposition of when it was deregistered; or the day of discovery of such deregistration; and if it was 28.08.2023, the applicant does disclose what he was doing for about a month and a half. (14.07.2023 - 28.08.2023).

Three, if the assertions above are the thing to go by, the affidavit is equally short of the deposition on how the applicant became aware of the deregistration and proof thereof. For instance, if he was notified on line (the notice not attached); or if he was verbally advised by the court official/s (no affidavit from them is attached); or upon payment of the fees vide control no. 991400928753, the confirmation message showing the date (extract thereof not attached); any complaint lodged by him with the court for the deregistration (no correspondence appended); just to mention but a few.

Four, according to the Court's stamp affixed on the application, filing on line; date of admission; date of creation of the control number; and date of payment of fees, all were on 28.08.2023. If the applicant had filed and paid for the first application on 14.07.2023; the justification for him to pay twice for the same document, is not deposed in the affidavit.

Therefore, with the above incongruities in perspective, it is safe for this Court to conclude that the time between 14.07.2023 and 27.08.2023 is not clearly accounted for. That is, 44 days of delay remain unaccounted for. In law, this is not legit. Instead, the settled cardinal principle of law is that, one applying for extension of time must account for each and every day of the delay. In the case of ***Hassan Bushiri v Latifa Mashayo***, Civil Application No. 3 of 2007 (unreported), the Court held that delay "**of even a single day has to be accounted for** otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

Other cases in line with the foregoing legal position are ***Yazid Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & another***, Civil Application No. 412/04 of 2018; ***Sebastian Ndaula v Grace Rwamafa*** (*legal personal representative of Joshua Rwamafa*), Civil Application No. 4 of 2014; ***Dar es Salaam City Council v Group Security Co. Ltd***, Civil Application No. 234 of 2015; ***Muse Zongori Kisere v Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019, ***Ally Mohamed Makupa v Republic***, Criminal Application No. 93/07 of 2019; and ***Lyamuya Construction Company Ltd. vs. Board of Registered Trustee of***

Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (all unreported).

Consequently too, the second ground (technical delay) lacks merit for having been interceded by days of delay account for which is not deposed or given. It is equally overruled.

For the stated reasons, I find this Court not sufficiently moved to extend time as prayed by the applicants. The application is, thus, baren of merit. It is accordingly dismissed. Each party to shoulder own costs. It is so ordered.

C.K.K. Morris

Judge

September 29th, 2023

Ruling delivered this 29th day of September 2023 in the presence of the applicant's principal officers (Messrs. Karim and Abdul) and advocate Christina Melkiadi holding the brief of advocate Charles Kiteja for the applicant. The 1st respondent, Mwajuma Mussa, is also in appearance.

C.K.K. Morris

Judge

September 29th, 2023