

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**MISC. LAND APPLICATION NO. 29 OF 2022**

**ATHUMANI KILANGO..... APPLICANT**

**VERSUS**

**MOHAMED GUMBO.....RESPONDENT**

*(Arising from Application for Execution No. 165 of 2019 of the District Land and Housing Tribunal of Korogwe at Korogwe originating from Hale Ward Tribunal Case No. 28/2018)*

**RULING**

*04/10/2023 & 18/10/2023*

**NDESAMBURO, J.:**

This ruling pertains to an application seeking for an extension of time, allowing the applicant to file a revision application against the decision made by the District Land and Housing Tribunal of Korogwe at Korogwe (DLHT) in Execution No. 165/2019, which was issued on the 20<sup>th</sup> October 2020.

The applicant in this application was initially sued by the respondent in the Ward Tribunal of Hale vide Land Dispute No. 28 of 2018. In that case, the respondent Mohamed Gumbo emerged a winner and the applicant herein lost the case. Having been dissatisfied with the

outcome, the applicant filed an appeal in the DLHT baptized as Land Appeal No. 11 of 2019. The respondent despite being served, defaulted to appear in the matter. Subsequently, the applicant who was the appellant won the appeal case and the DLHT ordered and decreed the following:

*"The appeal is allowed and the judgment and proceedings of the trial Ward Tribunal is (sic) quashed and set- aside for want of proper party to be sued. No order for costs".*

The applicant herein thereafter relaxed knowing that he had won the appeal against the respondent. According to the affidavit accompanying this application, the applicant states that the respondent silently and without notifying the applicant went to the same DLHT and initiated proceedings for Execution of the impugned decision of the ward Tribunal in Land Dispute No. 28/2018. This execution application was named Application for Execution No. 165/2019.

To the applicant's dismay, the application for Execution was heard and determined exparte against him. It was not until May 2021 that the applicant was astonished after receiving a notice from Majembe Auction Mart with orders to execute the nullified decision of the Ward Tribunal of Hale.

It was upon this knowledge that the applicant sought legal assistance on the way forward and fell under the hands of a bush lawyer who drafted for him documents for Application for Review No. 124/2021 before the DLHT. This application which was dismissed after being found to be incompetent as it was hopelessly filed out of time. He was also advised to seek proper legal opinion from a registered advocate. It is at this particular juncture that the applicant was assisted in filing this present application for an extension of time to file Revision against Execution Application No. 165/2019.

In this application the applicant appeared for himself, the respondent was served and did file a counter affidavit in which he countered every averment brought forward by the applicant in his affidavit and put him to strict proof of the same.

On the hearing date, this court in the presence of both parties, ordered that the application be argued by way of written submissions. The applicant complied with the scheduling order and filed his submission in chief on 13<sup>th</sup> September 2023. The respondent did not file his reply submission. The applicant later returned the written submission which was supposed to be served to the respondent with a note from the VEO of Ngomeni Village explaining that the respondent refused to be



served. It is settled that failure to file written submission as ordered is synonymous with default to appear on the day of the hearing of the case. See the cases of **Mbuga Enterprise Supplies Company Limited v Kongwa District Council** Civil Case No. 1 of 2010 High Court Dodoma Registry and **P3525 LT Idahya Maganga Gregory v. The Judge Advocate General**, Court Martial Criminal Appeal No. 2 of 2002 (unreported). That being the case, the court is all set to determine this matter.

As it can be collected, the application before this court is for an extension of time to file Revision against execution proceedings. Solid is the principle that in an application for an extension of time, the applicant has to account for every day of the delay and that failure to do so would be fatal to the application. Precedents bearing this holding are many but to mention a few are **Bushiri Hassan v Latifa Mashayo**, Civil Application No. 2 of 2007 and **Sebastian Ndaula v Grace Rwamafa (Legal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014.

The law provides in Section 14 (1) of the Law of Limitation Act that the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application.

In Civil Application No. 38/10 of 2017 between **Efrasia Mfugale v Andrew J. Ndimbo and another**, the Court of Appeal had this to state about the phrase "reasonable/sufficient or good cause":

*"It may not be possible to lay down an invariable or constant definition of the phrase "good cause", but the Court consistently considers a myriad of factors. One such factor, which happens to be relevant to this matter, is whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged: see **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185; and **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported)".*

Going by the affidavit of the applicant in this case, the present application is mostly premised on illegality allegations. Looking at the chronological sequence of events deposed in the affidavit by the applicant, it is not hard to find that the requirement of accounting for each day of delay has not been observed. Certain periods of delay have remained unaccounted for, like from May 2021 when the applicant learnt that there had been an execution matter against him to when he went to initiate the defective Application for Review No. 124 of 2021 at the DLHT. Also, from 28<sup>th</sup> April 2022 when that application was dismissed to

16<sup>th</sup> June 2022 when this application was filed in this court. It is without doubt that the applicant has not succeeded in explaining every day of delay.

Fortunately, an akin situation was tackled in **Mfugale's case** (Supra). The court in that case observed,

*"Indeed, having carefully examined the chronology of the steps the applicant took in her pursuit of justice as revealed in the supporting affidavit and revisited by counsel, it is clear to me that certain periods of delay are unexplained".*

However, where there is illegality, the court may still exercise its discretion and extend the time requested even where the applicant has failed to account for each day of delay. The Court of Appeal of Tanzania in **Attorney General v Emmanuel Marangakisi (as Attorney of Anastansious Anagnostou) & 3 Others**, Civil Application No. 138 of 2019 (unreported), stated the position by stating that:

*"Despite failing to account for the delay, the Court can exercise its discretion and extend the time applied, once there is illegality claimed, that is a sufficient cause to warrant the grant of the application".*



In the present application, the applicant has put forth, both through his affidavit and the main submission, the argument that the decision he is seeking an extension of time to challenge is based on an Application for Execution. This application, according to the applicant, originated from a matter that, in reality, does not exist. As propounded in the authorities given above, the court which hears an application for an extension of time is duty-bound to look into the material placed before it thoroughly to find out whether there indeed exists an illegality which is of sufficient importance to warrant the grant of extension of time.

Guided by that same spirit I have taken the liberty to go through the record brought together with this application. The applicant has attached the decision of Land Dispute No. 28/2018 of the ward tribunal of Hale dated 04/12/2018 in which the applicant lost the case. Also, the decision of Land Appeal No. 11 of 2019 of Korogwe DLHT dated 28/11/2019 in which the Hale ward tribunal decision was quashed and set aside, the decision of Application for Execution No. 165/2019 dated 13/10/2020 which was decided *ex parte* and the source of this application, a notice of vacant possession by Majembe Auction Mart Ltd

(Vijana wa Kazi) dated 30/04/2021 and the decision of Review No. 124 of 2021 of Korogwe DLHT dated 28/04/2022.

Having looked into the application and the accompanying documents it is without doubt that the complaint by the applicant that the execution sought to be challenged stemmed from a decision which was already nullified is an illegality and a sufficient cause worthy of extension of time for it to be considered in a revision proceedings by this court.

The application is therefore granted and the applicant is given thirty (30) days to file an Application for Revision in this court. Cost shall follow the event.

It is so ordered.

**DATED** at **TANGA** this 18<sup>th</sup> day of October 2023.



A handwritten signature in blue ink, appearing to be "H. P. Ndesamburo".

H. P. NDESAMBURO

**JUDGE**