

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DODOMA SUB REGISTRY  
AT DODOMA**

**MISCELLANEOUS LAND APPLICATION NO. 43 OF 2023**

(Arising from Misc. Land Application No. 1 of 2021 District Land and Housing Tribunal  
for Singida at Singida originally Land Application No. 7 of 2013).

**PASKALI MIANGA** (as Administrator of the  
estate of the late **MIANGA NTANDU**).....**APPLICANT**  
**VERSUS**

**DAUDI KIJANGAI** (as Administrator of the  
estate of the late **KIJANGAI GHUMPHI**)..... **RESPONDENT**

**RULING**

Last Order: 22/2/2024

Date of Ruling: 22/3/2024

**MASABO, J.:-**

Before me is an application for leave for extension of time made under section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019. The applicant is praying for an enlargement of time within which to file an application for revision of the Miscellaneous Land Application No. 1 of 2021 before the District and Land and Housing Tribunal for Singida at Singida (DLHT). Accompanying the application is a chamber summons deponed by the applicant in which the following brief facts are discerned.

The parties contend over ownership of a parcel of land which has been a subject of multiple proceedings including Land Application No. 7 of 2011, Misc. Land Appeal No. 98 of 2013, Land Application No. 90 of 2017, Misc.

Land Application No. 766 of 2020 and Misc. Land Application No. 1 of 2021. Some of these proceedings were difficult to comprehend as no comprehensive facts were divulged about them. All that I could discern from these multiple proceedings was that the Respondent was a decree holder in Land Application No. 7 of 2011. In 2021 he petitioned for execution of the decree in Miscellaneous Land Application No. 1 of 2021. The application was determined on 12<sup>th</sup> December 2022. However, as the decree holder, he took no further steps to regain the actual occupation of the suit land the reason for his restraint being the pendency of Land Application No. 90 of 1997 which he had instituted in his personal capacity claiming ownership of the suit land. The suit ended successfully and she proceeded to apply for an order for execution of the decree in Misc. Land Application No. 66 of 2020. By 12<sup>th</sup> December 2021 when the tribunal determined the application sought to be challenged, Miscellaneous Land Application No. 66 of 2020 had not been determined and for that reason, the respondent did not immediately take any court action.

After Miscellaneous Land Application No. 66 of 2020 was decided, the applicant sought an extension of time within which to file an application for revision as the application within which to apply for revision had already lapsed. The application was admitted as Miscellaneous Land Application No. 26 of 2020 but it was withdrawn on 24/2/2022. On 7<sup>th</sup> July 2023, he filed the present application claiming that the decision DLHT had material illegalities as it executed a decree that had been nullified by this court in Miscellaneous Land Appeal No. 19 of 2013. The respondent disputed the

application through his brief counter affidavit in which he deponed that the application is without merit and should not be entertained as the material irregularity deponed is nonexistent.

When the application was called on for a hearing, both parties had representation. The applicant was represented by Mr. Lucas Komba, learned counsel and Mr. Godfrey Wasonga appeared for the respondent. In his brief submission in support of the application, Mr. Komba adopted the applicant's affidavit as part of his submission. He then prayed that the ground of illegality demonstrated in paragraphs 3 to 7 of the affidavit be found a sufficient cause for delay and on that basis, the application be granted.

Mr. Wasonga for the respondent was also very brief. He submitted that; the application should not be granted as it is without merit because, as per section 38 of the Land Disputes Court Act, Cap 216 R.E. 2019, the available remedy for the applicant is appeal as opposed to revision. Thus, it would be wrong for this court to grant the application. He in addition submitted that this court was wrongly moved as the application was made under section 14 of the Law of Limitation Act, Cap 89 as opposed to the provision under section 42 of the Cap 216 which is the applicable law. In rejoinder, Mr. Komba did not bother to respond to any of these two points. He just stated that he reiterates his submission in chief.

I have considered the submission by the parties alongside the chamber summons, its affidavit and supporting documents as well as the counter

affidavit. This being an application for an extension of time, the ultimate issue for determination is whether or not it has merit and should be granted. Before I move to this issue, I have noted the objection raised by Mr. Wasonga in his submission on the competence of this application. I will start with it. With much respect to the learned counsel, I will not be detained by this point as it was improperly raised from the bar. Hence, as per the settled law, it is nonactionable for being a mere statement from the bar (see **Karibu Textile Mills Limited v. Commissioner General Tanzania Revenue Authority**, Civil Reference No. 21 of 2017 (unreported) and **Farida F. Mbarak & Another vs Domina Kagaruki & Others** (Civil Reference 14 of 2019) [2021] TZCA 600 TanzLII).

Regarding the merit of the application, as stated above, the application before me being for an extension of time has a sole ultimate issue to determine, namely whether the application has merit. Section 14(1) of the Land Disputes Court Act, Cap 216 deals with appeals and revisions from the District Land and Housing Tribunals (DLHTs). It states thus:

"41.-(1) Subject to the provisions of any law for the time being in force, **all appeals, revisions and similar proceedings from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.**

(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order: **Provided that, the High Court may, for the good cause,**

**extend the time for filing an appeal either before or after the expiration of such period of forty-five days.**  
[the emphasis is added].”

Therefore, for an application for extension of time to sail it has to be established that the delay was with a good cause. The same requirement is also found under section 14(1) of the Law of Limitation Act, Cap 89 RE 2019. The term good cause has not been universally defined and as held by the Court of Appeal in **Uswege Webb Luhanga & Another vs Mussa Mohamed Mnas & Another** (Civil Appeal No. 218 of 2021) [2024] TZCA 106 TanzLII;

“What amounts to sufficient ground depends on the circumstances of the case. See- **Regional Manager Tanroads Kagera v. Ruaha Concrete Company Ltd.**, Civil Application No. 96 of 2007 (unreported) and a plethora of our decisions.

As a matter of principle, we wish to reiterate that, the powers to grant or refuse to grant an extension of time for doing any act is the court's domain and subject to judicial discretion.”

And, as stated in **Asha Juma Mansoor and 9 Others v. John Asheri Mbogomi**, Civil Application No. 192 of 2020 [2021] TZCA 451 TanzLII;

“Certainty, there are no laid down variables or a clear definition of the phrase “good cause” when exercising the discretion.....there are factors which the Court considers when

determining this... These factors though not exhaustive are such as; the lengthy of delay; the reason for the delay; the degree of prejudice the respondent stands to suffer if time is extended; whether the applicant was diligent; and whether there is a point of law such as the illegality of the decision sought to be challenged."

Starting with the lengthy of delay, the application herein is sought to enable the applicant to file an application for revision of the decision of the DLHT in Miscellaneous Land Application No. 1 of 2021 which was delivered on 30/9/2021. As this application was filed in this court on 7<sup>th</sup> July 2023, it is obvious that the delay is inordinate and inexcusable unless a good cause has been demonstrated as more than two years had lapsed when the applicant filed the present application.

Convincing the court that the delay is excusable, the applicant has through paragraph 3 of his affidavit in support of the application, stated that he took no steps against the ruling as he was waiting for determination of the Miscellaneous Land Application No. 2020. After this application was determined, he filed an application for extension of time which was withdrawn on 14<sup>th</sup> June 2023 after which he instituted the present application on 7<sup>th</sup> July 2023. He has also deponed in paragraph 8 of the affidavit that there is an illegality in the ruling sought to be challenged as it granted an execution of an order which had already been nullified by this court in Miscellaneous Land Appeal No. 98 of 2013. As per Mr. Komba's brief

submission in support of the application, the grounds deponed herein revolve around two clusters namely, a technical delay deponed under paragraphs 3 to 7 of the affidavit and illegality as deponed under paragraph 8.

Indeed, technical delay, understood as the time spent by the applicant in pursuit of wrong legal actions, is acceptable as a good cause hence. However, in the present case, this ground can not stand as, save for the application for an extension of time which was withdrawn, the applicant was not in pursuit of mistaken or wrong legal actions. Rather, he was riding several horses at the same time which is not legally acceptable. As for illegality, it is now a settled principle that illegality suffices as a good ground for an extension of time. Expounding this principle in the case of **Principal Secretary Ministry of Defence and National Service v. Devram P. Valambia** [1992] TLR 387 the Court of Appeal held that:

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right"

And, in further fortification in the case of **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7, and 8 of 2006 (unreported) the Court of Appeal stated thus:

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

Guided by these authorities, I am of the firm view that it is in the interest of justice that the application be granted so as to avail the applicant an opportunity to file an application vide which it can be ascertained whether, the execution proceedings were a nullity as the decree subject to the application had already been nullified by this court. Accordingly, leave is granted to the applicant to file his application for revision within 14 days. The parties shall shoulder their respective costs.

**DATED** and **DELIVERED** at **DODOMA** this 22<sup>nd</sup> day of March 2024.



  
**J. L. MASABO**  
**JUDGE**