IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SHINYANGA SUB REGISTRY

AT SHINYANGA

MISC. LAND APPLICATION NO. 68 OF 2023

LAGAWA SILASI ZENGO (Administrator of

The estate of Late JIYOJA ZENGO) ..... APPLICANT

VERSUS

NKOBA WINOGELA

(Administrator of late WINOGELA NYANZA) .....RESPODENT

RULING

14/02 & 11/3/2024

F.H. MAHINBALI, J

The genesis of this ruling, purportedly traces its root from the decision of this Court vide Land revision no. 03 of 2022 in which the respondent successfully challenged the decision of Maswa DLHT in Misc. Land Application No. 833 of 2022 which purported to set aside the exparte judgment in Land Application No. 25 of 2017. In settling the dispute brought vide the Land Vision No. 03 of 2022, I ruled that Land Application No.833 of 2022 setting aside exparte judgment in Land Application No. 25 of 2017 was not properly done. The same was thus, set aside.

However, by way of obiter, I stated that: *If there were two conflicting decisions in the said Land Application No. 25 of 2017 as*

contended by the respondent (now applicant in this case), if that assertion is true, it ought to have been referred to the High Court either by way of reference or revision and not for an application of setting as done. I thus allowed that application by nullifying that latter decision of Maswa DLHT in Land Application No.833 of 2022 and restored the decision of the Land Application No. 25 of 2017 of the said Maswa DLHT.

Now, purporting to heed on the directives of this Court in the said Land Revision No. 03 of 2022, the applicant (who was the respondent in that case), has come, knocking doors of this Court for extension of time to file revision against the decision of Maswa DLHT in Land Application No. 25 of 2017.

The said application has been opposed by the respondents both on legal preliminary objection and secondly on the merit of the application.

On the point of law, it has been argued that the said applicant lacks locus standi to sue on behalf of Jiyoja Zengo whereas the annexed form no.IV of Kimali Primary Court, names him as administrator of the estate of the late Jiyoja Zengo Nyalandu and not Jiyoja Nzengo. Thus, as there is no legal document introducing him as administrator of the late Jiyoja Nzengo, he lacks legal mandate to sue at that capacity. The contentious issue is based on two distinct names; "***Jiyoja Zengo" and "Jiyoja***

Zengo Nyalandu" as to whether entail one person and if yes, is there any supportive legal document. The Latin maxim is couched in the wording *"nihil facit error nominis, cum de corpore costat"* i.e an error as to a name has no effect when there is no mistake as to who is the person meant. See also the English Court of Appeal case of **Davies v. Eslby Brothers. Ltd. Lord Delvin [1960] 3 All ER 672.**

I have keenly scanned the arguments by both sides; for and against the application on this legal objection. I am first satisfied that as per this application, the applicant appears to be the administrator of the estate of the late Jiyoja Nzengo. As he lacks the supporting legal document for the said administration save that of Jiyoja Nzengo Nyalandu, it cannot be assumed that the two names mean and refer the same thing. There ought to be affidavital explanations on that.

In the case of **National Oil v. Aloyce Hobokela, Misc. Labour Application No.212 of 2013,** where the issue was; whether National OIL was the same with National oil Tanzania Ltd. The Court ruled that, those were two different companies. Henceforth, the application was dismissed. Also, the case of **The Registered Trustees of Chama cha Mapinduzi v. Mohamed Ibrahim**, Civil Appeal No.16 of 2008. In this case, the issue was; whether the Registered Trustees of Chama cha

Mapinduzi and Naibu Katibu Mkuu CCM was the same party. The Court ruled out that those were two different parties. In the circumstances, the Court of Appeal set aside the High Court Judgment.

In the circumstances, the applicant has no locus stand to pursue the current application in favour of the deceased Jiyoja Zengo while himself holds legal letters for the administration of the estate of the late Jiyoga Zengo Nyalandu.

Therefore, the objection raised is on pure point of law in the light of the daily cited famous case **of Mukisa Biscuit Manufacturing Co Ltd v. West End Distributors Ltd [1969] 1 EA 696** in which preliminary objection was defined to mean that: is in the nature of what is used to be a demurrer. It is a pure point of Law which is argued on the assumption that if the facts pleaded by the other side are correct.

I would have ended here as it was sufficient ground to dispose of this application. However, just for the sake of argument; on the merit of the application, it has been countered that the same lacks merit for want of accounting each day of delay from the date when the said judgment of the DLHT was pronounced to the date of filing this application.

On the illegality grounds, it has been argued that the same are erroneously applied in the context of this case. It has been submitted, the

issue of res-judicata being a matter of fact, it could only be a point on illegality ground, had it first be argued at the trial court. As it was not, it cannot now be raised at the appellate court.

Other illegalities, are far away from truth, argued Mr. Frank Samuel, learned counsel for the respondents while resisting the application.

Mr. Audax, learned counsel for the applicants, insisted that the application be granted for the interests of justice, arguing that there are illegalities pointed out in respect of the trial tribunal's judgment which by themselves warrant the grant of the application. On this, he drew support from the decision in the case of **Principal Secretary Ministry of Defence and National Service Vs. Devram Valambia** (1992), TLR 185 by the Court of Appeal.

On digest of the arguments on the merit of the application, it is first true that I had opined so, that the applicant ought to have filed reference or revision application to rectify the alleged error if any (on res judicata). But, by saying so, I had not relaxed the law of limitation from running or that I had granted the applicant with automatic permission to file this application on the reason that already there was explained delay for each day. That was just an opinion of the court, and ought not necessarily to be applied now. I think, it ought to have been executed longer than today

or prior to the findings in that revision application. What it can be gathered from this, is exhibition of ignorance of law from taking a proper course timely. Otherwise, it is a mere apathy which in law is nothing but negligence. See **Ngao V. Godwin Losero** Civil Application No. 10 of 2015 at page 4, making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2/2010 – unreported, the Court of Appeal reiterated the following guidelines for the grant of extension of time.

a) The applicant must account for all the period of delay.
b) The delay should not be inordinate.
c) The applicant must how diligence and not apathy, negligence or sloppiness in the prosecution of the action that he is intending to take.
d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged.

Not taking a right action on time, does not constitute technical delay but exhibition of ignorance of the law in which is no defence at all.

Admittedly, illegality or otherwise in the impugned decision can by itself constitute a sufficient ground for an extension of time. This is in

accordance with the principle in the **Principal Secretary Ministry of Defence and National Service vs. Devram Valambia**, (1992) TLR 185 and the case of **Lyamuya Construction Company Ltd**. However, for illegality to be the basis of the said grant, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of the appellate court and not one that would be discovered by a long drawn argument or process. [See for instance, **Lyamuya Construction Company Ltd vs. Board of the Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010 (unreported)]. From the factual background of this application as has been exposed above, I am of the firm opinion that, this application is devoid of any merit and it is indeed an abuse of the Court process. There must be an end to every litigation. The raised illegality on res judicata for a case decided in 2020, I wonder if it ought to have been discovered by a long drawn argument or process for it to be raised now. It cannot take a half decade for one to find an illegality in the decision for a redress before the appellate court. That will not be law in my considered view. In any way there must be a spontaneous action by the applicant contending so for an illegality to constitute a ground of extension of time. To raise it now, in any way is just an afterthought. The choice has consequences. As the applicant didn't even raise it in his WSD

before the Maswa DLHT by then, how can it be addressed at the appellate court it being a matter of fact; it ought to have been promptly raised before the trial tribunal.

The issue of technical delay either, does not arise in this case as the previous Land Revision was not preferred by the applicant but rightly and timely by the respondent. Thus, he cannot benefit from it.

All this said and done, the application is misconceived and is hereby dismissed with costs.

DATED at SHINYANGA this 11th day of March, 2024.

F.H. MAHIMBALI

Judge