

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND APPLICATION NO. 27898 OF 2023

SEIF SAID MUSA.....APPLICANT

VERSUS

ANDREW JOSEPH MASSAWE.....RESPONDENT

RULING

MIRINDO, J.:

The applicant, Seif Said Musa, was the losing party in land dispute brought by the respondent, Andrew Joseph Massawe, before Kiteto District Land and Housing Tribunal. The applicant was unsuccessful in his application for extension to appeal to this Court. This Court (Kahyoza J) dismissed his application on account of his failure to establish the good cause of illness.

Still undaunted the applicant has returned before this Court with an application for extension of time to apply for revision.

Prior to the hearing of this application, the respondent gave a notice of preliminary objection complaining mainly that this Court is functus officio to determine the application and that the application is res judicata. Both parties appeared in person at the hearing of the application and I directed hearing on both preliminary objection and the application.

Arguing in respect of the preliminary objection, the respondent stated that an application for extension of time between the respondent and the applicant has already been determined by this Court (Kahyoza J) and the application was rejected. He pointed out that a case cannot be determined twice in the same court. He concluded that the applicant was not serious in prosecuting the case and there was no reason why the applicant was in court.

The applicant did not have much to argue but stressed that the respondent had confused between an appeal out of time and an application for extension of time to file revision.

In my considered opinion that revision and appeal are both part of the supervisory jurisdiction of the appellate court with different procedures. Hence, a losing applicant in extension of time to appeal may successfully apply for extension of time to file revision if two conditions are satisfied. In the first place, there must be different grounds in both applications. Given that in the present application the applicant has set forth illegality as the ground for extension as opposed to illness in the previous application for extension of time to appeal, the

instant application is not *res judicata*. This Court is not functus officio in determining the application.

Secondly, the applicant must provide sufficient cause why the reasons given in the second application were not argued in the first application. It is a principle of law that a litigant is entitled to one bite at cherry and window-shopping remedies are not allowed. As was held by Ramadhani JA in **Obadia Adruhmani v Isaryande Abdurahmani**, Civil Application 5 of 2001, Court of Appeal of Tanzania at Arusha (2005) that:

...I remember that there is a decision, if not decisions of this Court which prohibits the practice of parties going window shopping for remedies in court...There will not be an end to litigation that way.

In the instant application, there was no reason why the plea of the illegality was not pursued in the application for extension of time to appeal. For this reason, I would have struck out the application as incompetent.

Even assuming that the application was competent, the plea of illegality was not made out in the instant application. The applicant argued the proceedings of the Kiteto District Land and Housing Tribunal were marred with illegalities. In his supporting affidavit, the respondent alleges two points of illegalities. The first point of illegality is that the sellers of the land in dispute were not made parties to the land dispute in the trial tribunal. The second point of illegality is that the tribunal misapprehended the evidence of his letter of offer.

At the hearing of the application, the respondent added a third point of illegality, that is, the tribunal erred in not visiting the *locus in quo*.

Do these points constitute sufficient points of illegality? In the leading case of **Principal Secretary, Ministry of Defence and National Service v D P Valambhia** [1992] TLR 185 at 188 the Court of Appeal held that for the plea of illegality to constitute cause for extension of time it must relate to "a point of sufficient importance." This point was reaffirmed in **Nyanza Co-operative Union (1984) v BP (T) Ltd**, Civil Reference 18 of 2008, Court of Appeal of Tanzania at Dar es Salaam (2009).

Besides, a point of illegality must be an error apparent on the face of the record. This aspect of the plea of illegality was stated by Massati JA in **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011):

...Since every party intending to appeal seeks to challenge a decision either on points of law or fact, it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law, must be that "of sufficient importance" and I would add that it must also be apparent on the face of the record, such as the question of

jurisdiction; not one that would be discovered by a long drawn argument or process.

The points raised by the applicant are neither of sufficient importance nor apparent on the face of the record. They require a closer re-examination of the pleadings and are not apparent on the face of the record.

I have come to the conclusion that even if the application was competent there was no case for the plea of illegality and I would have dismissed the application.

Given that the applicant offered no reason why the plea of illegality was not offered in the first application for extension of time to appeal, its presence in the second application for extension of time is an abuse of court process. I uphold the preliminary objection and struck out the application with costs.

DATED at BABATI this 21st day of May, 2024




F.M. MIRINDO

JUDGE

COURT: Ruling delivered this 23rd day of May, 2024 electronically in the presence of the respondent in person at Kiteto District Court and in the absence of the applicant. B/C: William Makori present.

Right of appeal explained.



F.M. MIRINDO

JUDGE

23/5/2024