

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

MSC. LAND APPLICATION NO. 55 OF 2023

*(Originating District land and Housing Tribunal Shinyanga at Shinanga in land
Application No. 83 of 2015)*

EVELYN SIMWAGA APPLICANT

VERSUS

**1. JOHARI IDDY KIBANDANI
2. DEVELOPMENT AND LIFE RELIEF
ASSOCIATION (DELIRA)**

3. DEUSEDERICK PHOCUS KAHENDAGUZA

RESPONDENTS

RULING

08th & 23rd February 2024

F. H. MAHIMBALI, J

The applicant herein is seeking for an extension of time to file revision against the decision in Misc. Land Application No.83/2015 before Shinyanga DLHT. Initially the 1st respondent filed Land Application No. 45 of 2014 before Shinyanga DLHT claiming among others a sum of Tshs 35,000,000/= and Tshs 5,000,000/= as general damages. The fate of the event arose when the second and third respondents sold their land at Plot No. 63 Block 'I' at Igomelo to the 1st respondent for Tshs 35,000,000/= but the said plot was designed for social activities. When the matter went to the Land Authority for change its use, the request was rejected and that

led for filing of Land Application No.45 of 2014 for refund of money used in purchase of the land in question. The matter was decided in favour of the 1st respondent. She then applied for execution vide Miscellaneous Application No. 83/2015, before Shinyanga DLHT, where by it was heard ex parte, consequently the application was granted and it was ordered that the Matrimonial House of the third respondent (the husband of the applicant) located at Plot No.247 Block "O" Mtakuja Street Nyasubi ward within Kahama town, be attached with in compliance of the order of the tribunal in Land application No.45 of 2014.

The issue of consideration is only one, whether there is merit in the current application?

In essence I am aware of the numerous cases filed before the DLHT trying to challenge the said sale by auction either by the CRDB Bank PLC, Desderick Kahendaguza or his spouse the applicant in respect of the said landed property. The cases include: Misc. Land Application No. 142 of 2021 which led to the Land Appeal No. 31 of 2021 of this Court, Misc. Land Application of 62 of 2022, Misc Land Application No. 2 of 2023 all before the Kahama District Land and Housing Tribunal and again Land Appeal No. 7 of 2023 filed in this Court. The gist of all these multiple cases

center around the same landed property located in Plot No.247Block "O" Mtakuja Street Nyasubi ward within Kahama town, challenging its sale.

While in all these cases this Court as well was being invited to address almost the same issue but on different facts, in the current case the applicant was unhappy with the decision in Misc. Land Application No.83/2015, for the matrimonial home to be attached and without being heard. She has now approached this court seeking for extension of time to file revision against the decision in Misc. Land Application No. 83 of 2015 based on two major grounds; the applicant delayed to file application for revision within the time due to number of suits which were pending before the courts of law and thus used much time in prosecution of cases and thus became late, the ruling in Misc. Land Application No.83/2015 contains illegality which needs to be cured by this Court.

During the hearing of this application, the applicant was advocated for by Mr. Denis Machui learned advocate, Mr. Tuli appeared for and on behalf of the 1st respondent, and the third respondent who is also a director of the 2nd respondent appeared in person and unrepresented.

Arguing the application Mr. Machui prayed before this court that the chamber summons and affidavit duly filed be adopted to form part of his submission.

He however proceeded that on the grounds stated in the affidavit, it is necessary for this court to revise the decision in Misc. Land Application No.83/2015. That the execution proceedings concern a matrimonial home in plot No. 247 Block "O" Nyasubi area within Kahama Municipality.

The 2nd and 3rd respondents sold plot No. 63 Block 1 at Igomelo in which he sold at a price of 35,000,000/=. Thus, failure to pay back the money, it led to the 1st respondent to attach house in plot no. 247, Block "O" Nyasubi area Kahama. As per section 48 of the CPC a matrimonial home is not subject for execution. On that basis, the applicant is seeking for extension of time to file revision before this Court.

Mr. Machui also contended that the delay to file revision was also due to the fact that there were numerous pending cases against her before this DLHTs as well as this court. The cases included: Misc. Application No. 142 of 2021 before DLHT Shinyanga, Land Appeal No. 31 of 2021 before High Court Shinyanga which emanated from Land Application No.142 of 2021 – DLHT Shinyanga. Misc. Land Application No. 2/2023 at DLHT Shinyanga emanating from Application No. 62 of 2020 – DLHT Shinyanga Land Appeal No. 7 of 2023 High Court Shinyanga. He alluded that with all these cases, since the applicant was party of these cases, made her delay to pursue her legal right hoping that the results of

those pending cases which were also involving her husband (3rd respondent) would relief the situation.

Mr. Machui referred this Court to the decision in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010** as quoted by the case of **Abubakar Rashid Ismal vs Ahmend Salum Rashid Katungunya & Another, Civil Application No. 347/17 of 2022** at page 9.

He also averred that in the current case equally just after the applicant had been aware of the need, he promptly filed this application. He therefore pressed for the application be granted.

On the side of Mr. Tuli learned advocate for the 1st respondent, prayed for the counter affidavit of the 1st respondent, be adopted to form part of his counter argument of the application.

Mr. Tuli also submitted that there is no any sufficient cause for this court to grant this application. The applicant has been party to all these mentioned cases since 2014. With miscellaneous Land Application No. 142 of 2021, the records are clear and are self-explanatory likewise is to the subsequent cases. In Land Application No. 45 of 2014, all respondents were ordered to pay back the purchase price. Therefore, there is no good

reason for such an extension of time as prayed. The application has not met any condition detailed in the case of Lyamuya Construction as cited by the Applicant's counsel.

Mr. Tuli countering the ground of illegality, he asserted that there is nothing material, the applicant being party to it didn't challenge it. She was already evicted since October 2019. She was only returned two years later however, that decision already was quashed by this court vide Land Appeal No. 31 of 2021. Thus, the bonafide purchaser ought to enjoy her purchased property. He prayed for the application be dismissed with costs for want of merits as the applicant had the right of appeal which she failed to exercise it.

On the side of Mr. Deusderick Phocus Kahendaguza (3rd respondent and also co-director of 2nd respondent), prayed that the counter affidavits filed be adopted to form part of his submission. And thus, he had no objection with the prayers sought in the application.

Mr. Machui, resting his submission, argued by reiterating what he submitted in chief. He also added that though the applicant appears to be named as party to those mentioned cases but was never duly served and thus, she was not heard.

I have dispassionately scanned the chamber summons, affidavit, counter affidavits and submission of both parties pertaining to this application.

The applicant is seeking leave for extension of time pursuant to section 14 (1) of the Law of limitation Act, Section 95 of the Civil Procedure Code.

As stated earlier that the application is grounded on two limbs; wastage of time in prosecuting case and illegality.

Looking at ground number one, it is true that there were numerous numbers of cases involved the parties to wit; **Miscellaneous Land Application No. 83/2015, Misc. Land Application 45 of 2014, Misc. Application No.142 of 2021, and Misc. Land Application No.2 of 2023, Misc. Land Application No.62 of 2022, all these were before Shinyanga DLHT** and Land Appeal No.7 of 2023, Land Appeal No.31 of 2021 before this Court.

Item 21 of the Law of Limitation Act provides that for an application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law the time limit is sixty days. Therefore, since the time limit for filing revision is not specifically provided, the position is that the time limit for filing application for revision is sixty days.

The last suit which inculcating the parties is Land Appeal No.31 of 2021 before this Court (Hon. Kulita Judge), which lasted on 20.4.2022. It is true that section 21 of the law of Limitation Act provides for exclusion of period in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is incompetent to entertain it.

The similar trend was discussed in the case of **Geita Gold Mining Limited vs. Anthony Karangwa**, Civil Appeal No. 42 of 2020, where the Court of Appeal stated that

" It goes without saying therefore, that section 21 (2) of the LLA does not require a party who intends to rely on it, to move the court by way of application for extension of time before he can have the time spent in prosecuting another proceeding against the same party excluded when

*computing the period of limitation. That is the law
which, though not fixed, is well settled"*

As shown herein, parties had lastly involved in a suit before this court on 20.4.2022. However, there is pending Land Appeal No. 07 of 2023 before this Court which is about to be determined recently. I cannot bet for its outcome; however, it is relevant in the outcome of the current matter especially on the lasting solution of the multiplicity and continuity of series of similar cases in the registry.

My point for consideration is that if the applicant was barred by numerous of cases to file her application within the prescribed time, how far has she managed to file this application despite that there is pending suit before this court which involves the same parties.

I am paused to rule out that the applicant is estopped to rely on this ground based on the facts, she had failed to illustrate how she was barred by being involved in various matters in instituting the application for revision within the prescribed time and thus her argument is devoid of any merit.

Having said that, and in the circumstances of the application pertaining, I move to consider the last ground expounded in the chamber summons and the affidavit thereto, contending that the decision of the

tribunal sought to be revised against is tainted with illegalities which this Court needs to look into. There are several decisions of the Court, which considered this issue, where the ground of illegality of the impugned decision is raised.

In **VIP Engineering and Marketing Limited and Two Others VS. Citibank Tanzania Limited**, Consolidated Civil Reference No.6, 7 and 8 of 2006 (unreported) it was held:

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (now Rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay'.

The issue was also considered in the case of **TanESCO vs Mfungo Leonard Majura and 15 Others**, Civil Application No 94 of 2016, (Unreported), where it was stated:

"Not Withstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, there is a complaint of illegality in

the decision intended to be impugned... suffices to move the Court to grant extension of time so that, the alleged illegality can be addressed by the Court'.

It is, however, significant to note that the issue of consideration of illegality when determining whether or not to extend time is well settled and it should be borne in mind that, in those cases extension of time was granted upon being satisfied that there was illegality, the illegalities were explained. For instance, in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1999] TLR 182, the illegality alleged related to the applicant being denied an opportunity to be heard contrary to the rules of natural justice. I also subscribe to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**(supra) as cited by Mr. Machui advocate for the applicant when the Court of Appeal observed;-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in **VALAMBIA'S** case, the court meant to draw a general rule that every applicant who*

*demonstrates 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***"

Applying the above mentioned statement of principle to the application under consideration, I have gone through the impugned ruling in Misc. Land Application No. 83/2015 before Shinyanga DLHT and also the subsequent cases filed such as **Misc. Application No.142 of 2021, and Misc. Land Application No.2 of 2023, Misc. Land Application No.62 of 2022, all these were before Shinyanga DLHT, Land Appeal No. 31 of 2021 and Land Appeal No. 79 of 2023** before this Court. Indeed, the filing of the current application is squarely an abuse of court process as the court of law is now put into a gambling game of justice something which is dangerous in the administration of justice. To allow such an abuse, is to expose this Court to a legal ridicule. I will not allow it ever. So long as this Court had already finally determined the fate

ownership of the said landed property in Land Appeal No. 31 of 2021, it cannot again re-determine the fate of the same property. The applicant could only make this application (if necessary), longer than now, if really mindful.

Having carefully considered the rival submissions in line with the affidavit and its annexures, I find that, the main issue which I have to address is whether sufficient cause for extension of time has been demonstrated. In this case, the applicant has solely relied on illegality as a ground for an extension of time.

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. However, for illegality to be the basis of the 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 current case having been dully determined by this Court vide Land Appeal No. 31 of 2021, it cannot now undo anything in it. See **Johnson Amir Garuma V. The Attorney General & 2 Others**, Civil Appeal No. 206 of 2018, CAT at DSM.

The application at hand clearly scanning is nothing, but an entertainment to a continuation of a series of proceedings at the instance of the applicant or her agents or associates seeking to reverse even the judgment of this Court vide Land Appeal No. 31 of 2021 which it confirmed the first respondent as the rightful owner of the said landed property. What else, should this court do? It is on that account that, I find this application devoid of any merit and an abuse of the court process as the former decision of this court is conclusive of the issue.

It is accordingly dismissed with costs.

DATED at SHINYANGA this 23rd day of February, 2024.




F. H. MAHIMBALI
Judge