

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB REGISTRY)**

AT MWANZA

MISC. LAND APPLICATION NO. 27686 OF 2023

*(Arising from the Ex-parte Judgment and Ex-parte Decree in Application No.45 of 2019 Hon. Mayeye
Chairman date 27 December 2019)*

BETWEEN

MARIAM MAGEGE APPLICANT

VERSUS

TATU IBRAHIM SELEMAN 1ST RESPONDENT

TAUSI JUMA2ND RESPONDENT

RULING

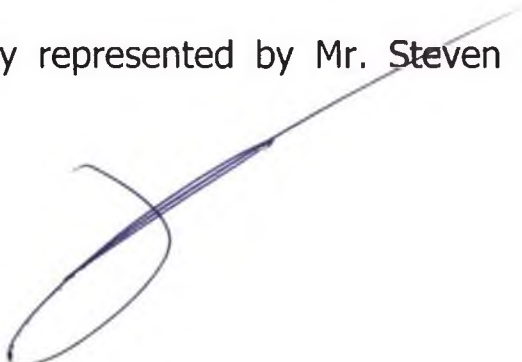
23th & 23th May, 2024

A. MATUMA, J.

In this application the applicant is seeking extension of time to appeal against the exparte judgment and decree of the District Land and Housing Tribunal for Mwanza in Land Application No.45 of 2019.

At the hearing of this application the applicant was present in person and had the service of Dr. Chacha Bhoke Murungu Learned Advocate.

The Respondent were jointly represented by Mr. Steven Mhoja learned advocate.



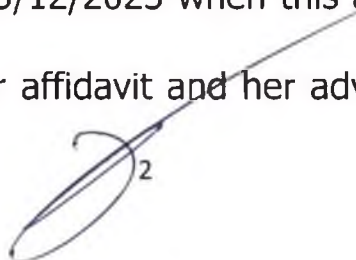
Mr. Murungu adopted the applicant's affidavit and submitted grounds of illegality and the denial of the right to be heard as among the reasons why this application should be granted.

He submitted that the impugned judgement and decree was passed ex parte without any notice of judgement to the applicant hence a denial of the right to be heard.

He also argued that the records on the face of it shows that the suit houses belonged to the late Tausi Hassan or Maguno Ally but the respondents sued in their individual capacities without a locus standi.

The learned advocate further argued that apart from the illegalities and the denial of the right to be heard, the rest of the time was spent by the applicant in court corridors in an attempt to set aside the ex parte judgment and decree but in vain. He made it clear that the impugned judgement was delivered on 27/12/2019 but the applicant became aware of it on 31/01/2020. Immediate after she became aware she knocked the court doors and stayed in its corridors up to 03/11/2023 when her final attempt to the court of appeal ended by a withdraw so that this Cause be taken.

Accounting from the said 3rd day of November, 2023 when her final matter in court was withdrawn to 15/12/2023 when this application was filed, the applicant has deposed in her affidavit and her advocate argued that, such



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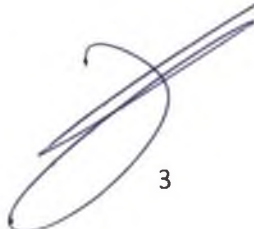
time was spent for travelling from Mwanza to Morogoro, then to Dar es salaam and preparation of this application and finally a filing process.

Mr. Steven Mhoja learned advocate for the Respondent on his part did not dispute the time constituting a technical delay. That is the period between when the applicant became aware of the impugned judgment on 31/01/2020 up to 3/11/2023.

He however contested the grounds of illegalities arguing that failure to give notice of judgment to the applicant and the alleged denial of the right to be heard which is actually the same complaint has been overtaken by event because its remedy is to apply for setting aside the exparte judgment so that she is accorded the right to be heard. He added that the applicant exhausted such remedy but failed and therefore the complaint that she was denied the right to be heard and that no notice of judgement was given cannot stand.

He also disputed the statements of the applicant which attempted to explain the delay between the time when her second bite to the court of appeal was withdrawn to the date when this application was filed.

On my part after a thorough **scrutiny** of the matter and having considered the arguments of the parties, I find that it is in the interest of justice to grant this application.

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal stroke and a vertical stroke.

First of all, it is on record that the suit houses initially were the properties of the late Tausi Hassan the respondents' grandmother. Upon her death in 1996 the houses were under the care of Magunwo Ally the respondents' mother who also passed away in 2008.

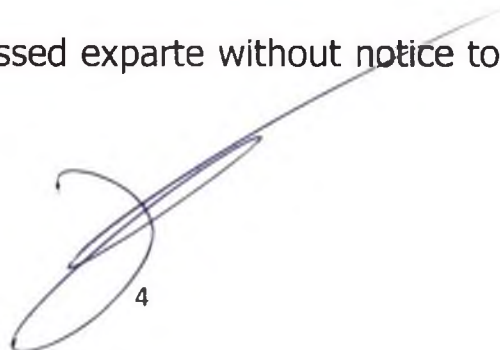
Then the respondents become administrators of the estate of their late mother.

Under the circumstances the records are silent as to how the houses in question became part of the estate of the respondents' late mother before they could come into their own personal estate.

This alone is a sufficient ground to warrant the extension of time so that the applicant appeals to this court for it to see the passing of the suit houses from its original owner to the respondents.

This is because the records at hand does not clear the mind unless the original records are placed on the table and that can only be done on appeal.

Again, I have not seen and or noted any serious **contention** that the notice of judgment was not given to the applicant. As such I find it better to extend her time so that she is heard against such exparte judgment because it is the law that a judgement passed exparte without notice to the respondent is no judgment at all.



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I am as well satisfied that the period between 03/11/2023 when the applicant withdrawn her second bite to the court of appeal to 15/12/2023 when this application was filed, it is not inordinate delay because it is undisputed fact that the withdraw was made in the court of appeal at Mwanza, but the applicant resides in Morogoro while her advocate is stationed in Dar es salaam. Therefore, the movements explained by the applicant and the bus tickets annexed to the affidavit sufficiently proves that the applicant did not stand mute or Ido on the matter. She was still in motion immediate after the withdraw of the suit in the court of appeal.

The rest of the time which was spent in drafting and filing this application is not inordinate and is sufficiently accounted for.

I therefore grant this application and extend the Applicant fourteen (14) days time from today within which to lodge her intended appeal to this court.

In the circumstances of this matter, I grant no costs to either part.

It is so ordered.



A. Matuma

Judge

23/05/2024