

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**MISC. LAND APPLICATION NO. 14 OF 2022**

**JUMA MUSSA YAKUTI** (The Administrator of the  
Estate of the late **OMARY SHIJA SWEYA**) ..... **APPLICANT**

**VERSUS**

**SALIM YUSUPH** (Kwa niaba ya Wasabato) ..... **1<sup>ST</sup> RESPONDENT**

**SADIKI OMARY SWEYA** ..... **2<sup>ND</sup> RESPONDENT**

**JUPITER AUCTION MART** ..... **3<sup>RD</sup> RESPONDENT**

*(Arising from Land Appeal No. 98 of 2015 of the District Land and Housing  
Tribunal for Korogwe, Originating from Civil Case No. 10 of 2014 of Kabuku  
Ward Tribunal)*

**RULING**

*16/04/2024 & 19/04/2024*

**NDESAMBURO, J.:**

The applicant in this application is seeking an extension of time within which he can file a revision against the decision rendered in Land Appeal No. 98 of 2015 by the District Land and Housing Tribunal for Korogwe, DLHT. The application is submitted through Chamber summons under section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019, and is supported by the affidavit of the Applicant.

The Applicant asserts, under paragraphs 2 to 7 of his supporting affidavit, that he is the duly appointed administrator of the estate of the Late Omary Shija Sweya, appointed by Kabuku Primary Court on the 19<sup>th</sup> of May 2005. Following his appointment, he undertook the responsibility of collecting the deceased's properties and distributing them to the heirs, except for land situated at Kabuku, which is the subject matter of the case above. He held off on distributing this particular land as he was waiting for the heirs, who were unavailable at the time. In 2020, he discovered that the first and second respondents were involved in a land dispute before the Kabuku Ward Tribunal, (the tribunal) registered as Civil Case No. 10 of 2014. This dispute subsequently escalated to Land Appeal No. 98 of 2014 before DLHT of Korogwe, and later to Execution No. 113 of 2019, also at DLHT of Korogwe, which was executed by the third respondent. Throughout these legal proceedings, the applicant as an administrator of the estate of the late Omary Shija Sweya, was not involved, from the level of the Ward Tribunal to the DLHT. The applicant only became aware of the matter after the execution had been carried out. Upon realizing this, he sought legal advice from a lawyer, who advised him to file an application for an extension of time in order to file a

revision. Despite his several attempts to obtain an extension of time, the Applicant faced numerous setbacks. Some of his applications were struck out by the court, while others he voluntarily withdrew, hence this application. In paragraph 15, the Applicant asserts that his application is predicated on illegality, as he, acting as the administrator of the estate, was not involved in the aforementioned matters.

In the counter-affidavit, the first respondent contends that the applicant was fully aware of the case brought before the Kabuku Ward Tribunal, as he appeared as one of the witnesses in that matter, and was also cognizant of the subsequent appeal. Additionally, the probate matter ought to have been concluded within a year. Furthermore, the respondent asserts that the applicant has failed to demonstrate any valid or substantial reason for the delay, which would justify the court's discretion to extend the time sought.

The second respondent filed a counter affidavit and did not dispute the application. The third respondent did not file a counter affidavit.

During the hearing of this application, the applicant was represented by Mr. David Andindilile, a learned counsel, while the first respondent was represented by Ernesta Chuwa, equally a learned counsel. The second respondent chose to advocate for himself, while the third respondent, despite being duly served, failed to make an appearance. The hearing proceeded by way of written submissions, with the applicant, the first and second respondents submitting their submissions.

In his written submission, the applicant asserts that on the 19<sup>th</sup> of May 2005, he was duly appointed as an administrator of the estate of the Late Omary Shija Sweya. However, he could not distribute the disputed area because he was waiting for the beneficiaries. In 2005, the first respondent initiated legal action against the second respondent, who is one of the beneficiaries of the estate, for trespass before the tribunal. The tribunal ruled in favour of the second respondent. Unsatisfied with this verdict, the first respondent appealed to the DLHT of Korogwe, where the decision was overturned in his favour. The applicant claims he was unaware of any appeal proceedings until after the execution had already taken place.

The applicant further contends that the properties of the deceased person are entrusted to the administrator of the estate until they are rightfully distributed to the heirs. It is undisputed that he was appointed as the administrator of the estate of Omary Shija Sweya. While the second respondent argues that the administration of the estate typically lasts for one year, this contention, though valid, lacks evidence to support the claim that his appointment was either revoked or that he had completed his duties. Therefore, the applicant maintains that he remains the administrator of the estate in question.

He further acknowledges his presence as one of the witnesses before the tribunal. However, he contends that during his testimony, he explicitly stated that he was the administrator of the estate of the late Omary Shija Sweya. He argues that the tribunal should have recognised this and advised the first applicant to join him as a necessary party in the proceedings. He criticises the DLHT for not utilising its revisional powers to nullify the proceedings due to the tribunal's failure to include him as a necessary party. To support his argument, he cites the Court of

Appeal decision in **Abdullatiff Mohamed Hamis v Mehboob Yusuph Osman and another**, Civil Revision No. 6 of 2017.

He emphasized that the failure to join him in the proceedings was a critical error, resulting in the denial of his right to be heard. This oversight constitutes an apparent illegality on the record, warranting the court's intervention to extend the time, as established 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).

Furthermore, the applicant clarifies that while the execution has indeed been carried out, as asserted by the second respondent, he is not seeking for a stay of execution or injunction, but rather an application for an extension of time. In support of this, he references the case of **Georgio Anagnostou and another v Emanuel Marakis and another**, Civil Application No. 464/01 of 2018 (unreported).

Drawing from these arguments, the applicant urges the court to grant the application.

In her reply submission, Ms. Chuwa vehemently opposed the application. She argued that the applicant was required to file an account for the administration of the estate of the late Omary Shija Sweya within one year, as stipulated by 107 of the Probate and Administration of Estate Act, Cap 352 R.E 2002. Additionally, she pointed out that the applicant neglected to apply for an extension of time to file the account until the matter was initially filed and decided by the tribunal.

She further contended that, for the application to be granted, the applicant must not only show good and sufficient cause but also must account for each day of the delay and prove that there is no inordinate delay on the part of the applicant. Among other references, she cited the case of **Hamisi Mohamed (as an administrator of the estate of the late Risasi Ngawe) v Mtumwa Moshi (as an administrator of the estate of the late Moshi Abdallan)**, Civil Application No. 407/17 of 2019.

Regarding the assertion of denial of the right to be heard as an apparent illegality on the record, warranting the court's intervention to extend the time, the learned counsel argued that

the cited case of **VIP Engineering and Marketing Limited** (supra) is distinguishable from the current application. She asserted that there was no denial of the right to be heard for the applicant, as he was aware of the matter before the tribunal and even participated as a witness in the proceedings. Therefore, she stressed that the applicant failed to establish the illegality necessary for this court to grant an extension of time as requested.

To conclude, Ms. Chuwa emphasized that the applicant has not accounted for each day of the delay and is seeking the court's leniency based on an unproven claim of illegality. She, therefore, prayed for the application to be dismissed with costs.

The second respondent supported the application with a concise submission. He stated that he was merely overseeing the disputed land on behalf of the applicant, awaiting the arrival of the heirs for the land distribution. While acknowledging being sued before the tribunal by the first respondent, he highlighted his lack of awareness regarding the appeal lodged at DLHT, which was decided in his absence.



He expressed his support for the application because the applicant, as the administrator of the estate of the late Omary Shija Sweya, should have been joined in the proceedings. He emphasized that the failure to join the applicant was a fatal error, depriving him of his right to be heard.

There was no rejoinder submission made by the applicant.

Upon scrutinizing the application, submissions and records, it became evident that the case numbers referenced in this application by the parties differed from the original record. The parties initially identified the matter heard by the tribunal as Civil Case No. 10 of 2015 and the Land Appeal heard by the DLHT as Land Appeal No. 98 of 2019. However, upon closer examination of the original records, it was revealed that the correct case numbers for the cases heard by the tribunal and the DLHT are Civil Case No. 10 of 2014 and Land Appeal No. 98 of 2015, respectively. Consequently, the parties were summoned to provide clarification. Upon clarification, the parties confirmed that the latter are indeed the correct case numbers and are the subject of this application.

Before delving into the specifics of the application at hand, it is crucial to clarify that the application before this court is an application for the extension of time. Therefore, the applicant must demonstrate good and sufficient cause for the delay. It is important to note that the ground of the applicant's application is rooted in matters of illegality. However, it is pertinent to acknowledge that certain issues raised by the first respondent may not directly pertain to the determination of this particular application. Matters such as the accounting of each day of delay and the intricacies surrounding the estate of the late Omary Shija Sweya like filing inventory and submission of accounts within a year and extension of time are, therefore, deemed irrelevant to the ruling on this application and will not be considered.

Now back to the application, this court has diligently reviewed the application and thoroughly considered the submissions, along with the cited authorities. The pivotal question at hand revolves around whether the applicant has satisfied the requisite criteria for the extension of time to be warranted.

Section 14(1) of Cap 89 under which this application hinges, provides:

*"Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.**"*

It is of no gain reiterating that from the above provision of law, the utmost prerequisite for a grant of extension of time is a manifestation of good and sufficient cause. What amounts to good and sufficient cause, is upon the applicant to provide materials that will persuade the court to apply its discretion to extend time.

Numerous decisions have discussed the eligibility of a party to be considered for an extension of time. **Sebastian Ndaula v Grace Rwamafa (Legal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014 where the Court held that the applicant for an application for the extension of time must give sufficient cause for the delay and account for every day of delay.

The sole remaining task for this court is to scrutinize whether the applicant has indeed met the aforementioned criteria. Upon

examining the affidavit and written submissions provided by the applicant, as earlier on said, the reason put forth by the applicant is the alleged illegality in the decision sought to be revised.

The position of the law indeed states that illegality in a decision sought to be challenged is a good ground for an extension of time. In the case of **Lyamuya Construction Limited v Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 the Court of Appeal stressed that in Valambhia's case, it was not meant to say that whenever an illegality is pleaded in an application for extension of time the application should be granted as of right if he applies for one. The Court there emphasized that such a point of law, must be "of sufficient importance" and added 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 alleged illegality raised by the applicant pertains to the fact that, during proceedings at the tribunal and the DLHT, the first respondent did not initiate legal action against the administrator of estates as expected. Instead, he pursued the case against the

second respondent who happened to be one of the beneficiaries of the estate of the late Omary Shija Sweya.

Upon reviewing the records accompanying this application, it becomes apparent that the principle regarding illegality as sufficient cause for a time extension is firmly established: it must be readily apparent (refer to **Hanspaul Automechs Limited v RSA Limited**, Civil Application No. 126/02 of 2018). The records reveal that the initial case brought before the tribunal was initiated by Kanisa la Wasabato Kabuku. It was only during the proceedings at the DLHT that the first respondent, representing Kanisa la Wasabato, made appearances. At the time of the tribunal's proceedings, the applicant had already been appointed as the administrator of the estate of Omary Shija Sweya, a fact that remains uncontested. Moreover, there is no evidence indicating that his appointment was either revoked or that he had completed his duties; thus, the applicant remained the administrator of the estate in question. Additionally, evidence from the tribunal indicates that during the hearing, the applicant explicitly stated his status as the administrator of the estate of the late Omary Shija Sweya. The applicant argues that this failure to include him in the

suit resulted in a denial of his right to a fair hearing. The first respondent contends that the applicant's right to be heard was not violated, as he appeared as a witness. However, it is crucial to clarify that being a witness does not equate to being a party to the case.

It is settled that the properties of the deceased person are entrusted to the estate administrator until they are rightfully distributed to the heirs and they are vested with the authority to initiate legal actions or be subject to legal actions: Paragraph 6 of the fifth Schedule to the Magistrates' Courts Act, Cap 11 R.E 2019. I concur with the applicant that as an administrator, he was a necessary party to the suit and should have been joined. The failure to join him rendered the proceedings ineffective, as his absence prevented the tribunal from issuing an effective decree, as stated in the case of **Abdullatiff Mohamed Hamis** (supra).

Before concluding, it is essential to address an argument raised by the first respondent, contending the untenability of this application due to the execution having already been carried out. However, as articulated by the Court of Appeal in the decision of **Georgio Anagnostou and another** (supra), it is crucial to clarify

that this court is not currently considering an application for the stay of execution. Instead, the matter at hand pertains solely to an application for the extension of time to file a revision. In this context, the applicant is required to demonstrate good and sufficient cause and therefore the issue of the completion of the execution is irrelevant to the present application.

The alleged illegality, as previously elucidated, is apparent on the face of the court record. In light of the authorities cited earlier, I am inclined to grant the application for an extension of time to file a revision in this court. The applicant is hereby granted 30 days to file the revision. As for costs, each party will be responsible for their expenses.

It is so ordered.

**DATED** at **TANGA** this 19<sup>th</sup> day of April 2024.



  
H. P. NDESAMBURO

**JUDGE**