

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB - REGISTRY

AT BUKOBA

MISC LAND APPLICATION NO. 10750 OF 2024

(Arising from the judgment and Decree of the District Land and Housing Tribunal for Ngara in Land Application No.10 of 2018 dated 22nd of June 2022 before Hon. R. Mtei Chairperson)

THE ATTORNEY GENERAL.....APPLICANT

VERSUS

LEAH P. SEMUGURUKA (*Adminitratix of the Estate*

***of Late Nathanael Miburo Semuguruka*).....RESPONDENT**

RULING

13/06/2024 & 13/06/2024
E.L. NGIGWANA, J

By way of chamber summons preferred under section 14 (1) of the Law of Limitation Act, [Cap 89 R.E 2019] and supported by an affidavit deposed by the Principal Officer of the applicant one Nestory Lutambi, this Court is called upon to extend time within which the applicant who was not a party to the proceedings in Land Application No. 10 of 2018, can file revision out of time.

In the conduct of this application, Mr. Gerald Njoka, learned State Attorney appeared for the applicant whereas Mr. Zeddy Ally, learned advocate appeared for the respondent.

In his brief oral submission, Mr. Gerald Njoka adopted the facts in the affidavit to read as part of his submission and urged the Court to grant the application on the sole ground of illegality. He submitted that DLHT for Ngara delivered its judgment on 22/06/2022 in Land Application No. 10 of 2018 therefore, it is apparent that the Tribunal lost jurisdiction on the matter following amendment made through the Written Laws (Miscellaneous Amendments) Act No.1 of 2020 which came into operation earlier before the conclusion of the proceedings. He went on submitting that since illegality is among sufficient grounds for extension of time, this is a fit application for the court to exercise its discretion and extend time to the applicant because the illegality is on the face of the record.

In reply, Mr. Zeddy Ally submitted that upon being served with the amended chamber summons, and upon reading the same and affidavit supporting the same, the proceedings and judgment of the trial tribunal as well as the Written Laws (Miscellaneous Amendments) Act No.1 of 2020, he arrived to conclusion that there is no legal justification to oppose this application because there is illegality touching jurisdiction of the DLHT concerning Land Application No. 10 of 2018.

Having carefully considered submissions by both sides 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 the matter at hand, the applicant has solely relied on illegality as a ground for an extension of time.

It is trite that illegality in the impugned decision can by itself constitute a sufficient ground for an extension of time. This position was stressed in the case of the **Principal Secretary Ministry of Defence and National Service vs. Devram Valambia**, (1992) TLR 185. See also **Jeremia Mugonya Eyembe vs Hamisi Selemani** (Civil Application 440 of 2020) [2021] TZCA 695 (29 November 2021).

However, for illegality to be the basis of the grant, it is now settled that it must be apparent on the face of the record. In other words, it is upon the applicant to demonstrate that the said illegality is apparent on the face of the record. See **Joyce Joram Lemanya versus Patricia Patrick Lemanya and another** (Civil Application 430 of 2021) [2023] TZCA 235 (10 May 2023), and **Lyamuya Construction Co. Ltd versus Board of**

Registered of Young Women's Christian Association of Tanzania

(Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011)

Coming to the matter at hand, the alleged illegality is apparent on the face of the record. The Written Laws Miscellaneous Amendment Act No.1 of 2020 amended section 6 of Government Proceedings Act Cap 5 R.2019 provides as hereunder; -

"25. The principal Act is amended in section 6, by (a) deleting subsection (3) and substituting for it the following-

"(3) All suits against the Government shall, upon the expiry of the notice period, be brought against the Government, ministry, government department, local government authority, executive agency, public corporation, parastatal organization or public company that is alleged to have committed the civil wrong on which the civil suit is based, and the Attorney General shall be joined as a necessary party"

(4) Non-joinder of the Attorney General as prescribed under subsection (3) shall vitiate the proceedings of any suit brought in terms of subsection (3)."

From the above it is apparent that section 6 (4) of the Government Proceedings Act [Cap 5 R.E 2019] as amended by the Written Laws (Miscellaneous Amendment) Act, Act No. 1 of 2020, is explicit that non-joinder of the Attorney General shall vitiate the proceedings of any suit brought in terms of section 6 (3) of the Act . The section is coached with the word shall, and under section 53 (2) of the Law of Interpretation Act, Cap 1 R.E 2022, the function must be performed.

Furthermore, section 7 of the Government Proceedings Act [Cap 5 R.E 2019] requires all suits against the Government to be instituted in the High Court of the United Republic of Tanzania.

It is trite law that when an amendment of the law affects a procedural step or matter only, it acts retrospectively unless good reason to the contrary is shown. See **Felix H. Masha & Another versus Exim Bank Limited** (Civil Reference No. 12 of 2017) [2021] TZCA 257 (14 June 2021).

It is worth noting that the retrospection of procedural law covers all matters that are instituted after the coming into force of the procedural law even though the factors that led to the institution of such matters took place before the enactment of such laws. Again, they cover matters pending when

the procedural law came into operation unless the amendment contains express stipulations limiting the ostensible retroactivity of that new provision.

See **Lala Wino versus Karatu District Council** (Civil Application No. 132 of 2018) [2019] TZCA 46 (1 April 2019).

In Land Application No. 10 of 2018, the respondent herein being an administratrix of the estate of the late Nathaniel Miburo, sued the Government of Mukirehe Village and the District Executive Director of Ngara District Council for trespassing into the land alleged to belong to the late Nathaniel Miburo.


The Written Laws (Miscellaneous Amendments) Act No.1 of 2020 was gazetted on 21/02/2020 in the Gazette of the United Republic of Tanzania No. 8 Vol. 101, meaning the same came into operation on 21/02/2020.

Considering the fact that the judgment of the DLHT in Land Application No.10 of 2018 was delivered on 22/06/2020, it is apparent that the DLHT for Ngara proceeded with the matter illegally.

From the foregoing, I hold that the applicant has managed to demonstrate good cause for this court to exercise its discretionary power to grant the sought extension of time. Therefore; the applicant is given 14 days from the

date of this ruling within which to file revision before this court. Considering the circumstances of this application, I make no order as to costs. It is so ordered.

Dated at Bukoba this 13th day of June 2024.


E. L. NGIGWANA

JUDGE

13/06/2024

Delivered this 13th day of June 2024 in the presence of Mr. Gerard Njoka, learned State Attorney for the applicant, Mr. Zeddy Ally for the respondent, Hon. A. A. Madulu-JLA, and Ms. Queen Koba, B/C.




E. L. NGIGWANA

JUDGE

13/06/2024