

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB-REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO. 62 OF 2022

REF No. 20221103000458990

(Arising from Land Appeal No. 27 of 2020 of the High Court of Tanzania – Musoma Sub Registry before Hon. E. G. Rujwahuka – SRM (Extended Jurisdiction))

BETWEEN

MATINDE WAMBURA..... 1ST APPLICANT

MGOSI NYADURU 2ND APPLICANT

VERSUS

KANDORE SAMSON RESPONDENT

RULING

11th&15th March, 2024

M. L. KOMBA, J.:

The application at hand is for extension of time within which applicants can file their application for certification on point of law on the decision of this Court before Hon. Rujwahuka, E. G (Extended Jurisdiction) in Land Appeal No. 27 of 2020 arising from Land Appeal No. 8 of 2020 District Land and Housing Tribunal for Mara at Musoma. The application is supported by an affidavit sworn by Matinde Wambura and Mgosi Nyaduru.

Respondent was not reachable and upon this court satisfaction that summons was dully served to respondent, I ordered the matter to proceed expert against the respondent.

Background which gave rise of the application at hand is that, respondent complained to Salama Ward Tribunal (the tribunal) that applicants have invaded his land. Upon summoned for hearing, both applicants attended and informed the tribunal that the land in dispute is located in different village and therefore Salama Ward had no territorial jurisdiction. Applicants refused to make further appearance to the Tribunal. Upon hearing the applicant (respondent herein), the Tribunal declared the respondent rightful owner of the disputed land. Applicants herein objected execution (Application No. 372 of 2019) but the application was dismissed.

Unsatisfied applicants filed Misc. Application No. 08 of 2020 for extension of time to file revision, stay of execution and costs. They lost again. Their appeal to High Court (Extended Jurisdiction) was found without merit and was dismissed. Now they have discovered that they are out of time there is point of Law to address court hence this application.

When the matter was fixed for hearing only applicants appeared without representation though they wish to have representation but economic factors

hinder them. When given the floor the 1st applicant being a lay person in law, prayed to this court to consider his affidavit and grant what he prayed. The same was to the second applicant she prayed this court to allow their prayer as narrated in affidavit.

It is trite law that whenever any part seeks for extension of time to file an application or appeal out of time, he/she must advance the sufficient reason (s) that the court can consider it before granting the same.

As the matter of fact, there is no decisive definition of what a sufficient/good cause is, however, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer and circumstances of the case. See **Jaliya Felix Rutaihwa vs Kalokora Bwesha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam.

The term reasonable or sufficient cause therefore is a relative one and is dependent upon party seeking enlargement of time to provide relevant materials in order to move the court to exercise its discretionary mandate in his favor. However, the Court, in my opinion, has produced two (2) criteria on the subject to assist judges and magistrates in resolving

disputes of this nature, namely: first, promptness of the applicant after becoming aware that he is out of time (see: **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987 and second, accountability on every day of the delay (see: **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007). Further, inordinate delay or negligence on part of applicants for enlargement of is discouraged by our superior court (see: **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra). It was resolved so to avoid applicants who file their application as and when they so wish. Delay can also be entertained when there is illegality which cannot be retain in the court record. In **James Anthony Ifada vs Hamis Alawi**, Civil Appeal No. **482/2014 of 2019** the court stated that;

'..... where there is allege illegality to the decision, extension of time need to be granted so that all alleged illegality can be addressed in the Court of Appeal to that appeal...'

In the present application, the applicant has registered two relevant materials in their affidavit namely: **first**, coram of the tribunal was not properly constituted and **second**, the trial tribunal did not have territorial

jurisdiction to determine the matter. These are the contents of paragraph 9 of applicants' affidavit.

Ward tribunal is creature of law and its composition is clearly stated. The law enacted in sections 4 of the Ward Tribunals Act [Cap. 206 R.E. 2002] and section 11 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] (the Act) require ward tribunals, during hearing and determining land disputes to consist not less than four nor more than eight members of whom three should be women.

The above section was defined by the Court in the precedent of **Edward Kubingwa vs Matrida A. Pima**, Civil Appeal No. 107 of 2018, after citation of the named sections 4 and 11 of the Ward Tribunals Act and the Act respectively that the above recited provisions of law clearly and mandatorily require that a properly constituted ward tribunal shall consist of at least four members, and not more than eight members, three of whom being woman. And the position was qualified in **Anne Kisonge vs Said Mohamed**, Land Appeal No. 59 of 2009 on the requirement of displaying gender status of all members who participate in decision making in ward tribunals.

Composition of ward tribunal is a matter of law and perusing the record I find names of members without gender as directed and basing on the applicants' submission, there was only one woman. In **Tryphone Elias @ Ryphone Elias vs Majaliwa Daudi Mayaya**, Civil Appeal No. 186 of 2017 courts were warned not to close eyes on illegality. I find this is irregularity enough to move this court.

Having said so, I hold that the applicants have sufficiently registered good reason to be granted what he prayed. I hereby grant 30 days from the date of this ruling to file application as prayed.

No order as to costs.

DATED at **TARIME** this 15th day of March, 2024.




M. L. KOMBA
Judge