

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 849 OF 2018

*(Arising from the decision of the District Land and Housing Tribunal for kinondoni
delivered on 28th June 2011*

ELINEEMA GERSON JAMBII.....1ST APPLICANT

ALLY PAMBA.....2nd APPLICANT

VERSUS

MARIAM HAMISI MAFTAHA.....RESPONDENT

Date of the ruling 11/12/2020

Date of the last order 06/10/2020

RULING

I. MAIGE, J

The applicants in this application have, by chambers summons and their joint affidavit, lodged, under section 41(2) of the Land Dispute Court Act, Cap 216 R.E 2019, the instant application. They are seeking for extension of time to appeal against the decision of District Land and Housing Tribunal for Kinondoni ("the Tribunal") in Land Application No. 243/2011.

The merit or otherwise of the application was argued by way of written submissions. The applicants were to file their written submissions on 24th

August 2020, the respondent on or before 7th September 2020. Rejoinder submissions would be filed on 14th September 2020. The applicants filed their joint written submissions in person in compliance with the court order. The counsel for the respondent filed his written submissions on 9th September 2020. I agree with the applicants in their rejoinder submissions that, the same was filed out of time without there being a court order for time enlargement. I will in the circumstance expunge the said submissions from the record and base my decision solely on the joint affidavit and submissions by the applicants. I have considered the applicants submissions in line with the facts in the affidavit. I will hereinafter decide whether sufficient cause for extension of time has been exhibited as the law requires.

The judgment, the subject of the intended appeal, has been attached in the joint affidavit. It was delivered on 28th June 2018 and extracted on 10th August 2018 according to the last page of the same. The applicants could do no nothing before 28th September 2018 because they were struggling to have filing fees. This application was filed on 23/11/2018. There is a difference of more than three months from the date of extraction of the judgment. From the date of judgment, there is a difference of more than

four months. In whatever case, I agree with Mr. El-Maamry that the delay is inordinate.

In the undisputed facts in paragraph 4 of the affidavit, the applicant orally sought for a copy of judgment soon upon its pronouncement. On 2nd July 2018, they made a formal request in writing through Infinity Law Attorneys. A copy of the request letter which is endorsed with the seal of the trial tribunal acknowledging receipt of the same has been attached in the affidavit. In accordance with the irrefutable deposition in paragraph 5 of the affidavit, a copy of judgment was availed to the applicants on 10th August 2018. The applicants claim that they would not do anything before 27th September 2018 because they were struggling to have advocate fees. It was not until on the said date that they were able to procure the same.

Since there has not been deposed an affidavit in opposition, I will give the applicants benefit of doubt and accept their proposition that their inaction between 10th day of August 2018 to 27th day of September 2018 was justified on account that they were struggling to get advocate fees. The question which remains is; what is the justification for a period of more than 50 days from 27th September to 23rd November 2018? The affidavit is silent. Equally

so for the written submissions. Without much ado, I will hold as a point of fact that the applicants have not justified such a period.

The applicants have placed reliance on illegality as a ground for extension. In accordance with the submissions, the illegality is on the name of the decree holder. The same are described in the sale agreement interchangeably as Maraim Hamis Maftaha and Mariam Hamis Maruzuk. I am well aware of the position of law in **the Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia [1992] TLR 182** relied upon by the applicants in their submissions, that illegality can by itself be a sufficient cause for extension of time, I cannot agree with them that, incorrect description of the names of the parties in the contract exhibited into evidence would render the decision illegal. In my view, such an incorrectness, if established, would amount to a mere error of fact and/or law. It would only affect the correctness and not the legality of the judgment. Equally so for the issue of the inaccuracy of the measurement of the size disputed property raised in the applicants' written submissions.

In my opinion therefore, the application is devoid of any merit. It is accordingly dismissed. For the reason that, the respondent did not comply

with the court directions as to the schedule of filing written submissions, I will not make an order as to costs.

Dated at Dar es Salaam 11th day of December 2020.




J. Maige

JUDGE

11/12/2020

Date: 11/12/2020

Coram: Hon. C. Tengwa - DR

For the 1st Applicant }
For the 2nd Applicant } Present

For the Respondent: Kabuzya Michael holding brief of El - Maamry

RMA: Bukuku

COURT:

Ruling delivered today in the presence of both parties and then respective advocate.



A blue ink signature, appearing to be "C. Tengwa", is written above the name.

C. Tengwa

DEPUTY REGISTRAR

11/12/2020