

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 205 OF 2020

*(Arising from Misc. Land Application No. 84 of 2015, original Kinondoni District
Land and Housing Tribunal Application No.188 of 2010)*

1. TERRANCE JEFFERY AUGUSTE.....1ST APPLICANT
2. EVERYNE REMEDIANA DESOUZA.....2ND APPLICANT

VERSUS

ROGERS BUKENE..... RESPONDENT

RULING

S.M. MAGHIMBI, J:

The applicant has lodged this application under the provisions of Section 14(1) of the Law Limitation Act Cap. 89 R.E 2019, seeking for the following orders:

- a) Extension of time within which to file a memorandum of review of the ruling and order of this court dated 7th November 2015 in Misc. Land Application No. 84 of 2015 (Hon. Mjemmas J as he then was).
- b) Costs of the application be provided for.

This Application was supported by an Affidavit of Mr. Terrance Jefferey Auguste, the 1st applicant, dated 20th April 2020. On the 05th November 2020, the court ordered the application to be disposed by way of written submissions and both parties adhered to the schedule of submissions. In

this application, the applicants were represented by Mr. Joseph Rutabingwa, learned Advocate while the respondent was represented by Mr. Dickson Venance Mtogese, learned Advocate.

In his submissions to support the application, Mr. Rutabingwa initially prayed that the affidavit of the applicant be adopted to form part of his submission. He then submitted that there was an appeal lodged at the Court of Appeal, but following the demise of advocate Semgalawe and upon obtaining a new representation, the applicants were advised to come back to this court to pursue the review process following revelation of matters of illegality apparent on the face of the record of the District Land and Housing Tribunal for Kinondoni ("The Tribunal") Land Application No. 188/2010 ('The Application'). That the illegalities were never brought to the attention of the court as presided over by Hon. Mjemmas J (as he then was).

Mr. Rutabingwa continued to submit that the illegality of the decision of the Tribunal rendering that decision a nullity is the manner in which the assessors were changed and how they gave their opinion contrary to the mandatory requirement of Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003, which requires the assessors to give their opinion in writing, in open court and in the presence of the parties. To support his argument, he cited the decision of the Court Appeal in the case of **Sikuzani Said Magambo and Another Vs. Mohamed Roble Civil Appeal No. 197 of 2018** (Unreported).

Mr. Rutabingwa continued to submit that the other apparent illegality is the manner in which the chairmen changed hands without assigning reasons of their taking over, including the chairman who concluded the

trial. He argued that by doing so, they did not observe the requirements of Order XVIII Rule 10(1) of the Civil Procedure Code Cap 33 R.E 2019. That the two points of illegality are sufficient to move the court to extend the time to enable the applicants to apply for the review of the ruling in question delivered by the Hon. Mjemmas. He argued that the Court of Appeal and this Court have in numerous decisions held that where there is a claim of illegality of the challenged decision, it constitutes sufficient reasons for extension of time regardless of reasonable explanations to account for the delay. To support his argument, he cited the decision of the Court of Appeal in the case of the **Attorney General Vs. Tanzania Ports Authority and Another, Civil Application No. 87 of 2016** (unreported) whereby that position was held.

He submitted further that the affidavits and the attached rulings and order confirm that the applicants have been in court though at times through wrong forums. That soon after withdrawal of the notice of appeal on 05th March 2020 and tracing of the record of the District Tribunal for necessary papers, this application was accordingly filed on the 21st April 2020, therefore the applicants acted promptly. He finalized his submissions by praying that this court extend time to enable the applicants to file the application for review of this court's decision of 17th November 2015. He further prayed that the costs follow cause in the intended application.

In reply, Mr. Mtogesewa submitted the applicants unsuccessfully instituted before this court a Misc. Land Application No. 84 of 2015 before Hon. Mjemmas, J. seeking extension of time to appeal against

the decision of the Tribunal in Land Application Number 188 of 2010 dated 26th November 2014. That under paragraph 16 of their affidavit, the applicant did not bring to the attention of this court the existence of the procedural issues that allegedly arose during the trial before the Tribunal. That the negligence of their advocate to check the law cannot be used to justify the extension of time.

He pointed out that the applicants also lodged a Misc. Land Application No. 121 of 2016 for extension of time to apply for leave to appeal to the Court of Appeal of Tanzania and the same was granted by Hon. Mjemmas, J on 24/05/2016. That they once again failed to file their appeal to the Court of Appeal on time and they decided to lodge an application before the Court of Appeal vide Civil Application No. 304 of 2017 for extension of time to appeal to the Court of Appeal against this court's decision refusing to grant extension of time in Misc. Land Application No.84 of 2015. That the Civil Application No. 304 of 2017 was on 24/2/2020 withdrawn by the applicants as they said they no longer wished to pursue it. They then lodged the instant application seeking for extension of time so that they can have this court's same first decision that is the Misc. Land Application No.84 of 2015 delivered on 17/11/2015 be reviewed and not appealed as earlier on pursued.

Mr. Mtobesewa argued that the applicants have failed to adduce sufficient reasons and establish each or every day of delay, citing the decision of the Court of Appeal of Tanzania in the case of **Tanzania Rent a Car Vs. Pater Kimuhu, Civil application No.226/01 of 2017** (unreported) where the Court held that each day of delay must be explained. He argued further that if some lenience has to be taken since

the applicant's withdrawal of their **Civil Application No. 304 of 2017** on 24/02/2020 and withdrawal of the Notice of Appeal of 05/03/2020 before the Court of Appeal of Tanzania which is contested, it has taken up to 21/4/2020 to file the instant application, which is the delay of 47 days which are not dully accounted for. That wrong pursuit and implicit admissions of failure to check the law is not supportive reason for extension of time and leaves the above inordinate delay well unaccounted. Further that there are no apparent illegalities as claimed. He finalized his submissions by praying that this court dismiss this application with costs.

In rejoinder Mr. Rutabingwa reiterated what he said in his submission in chief. He added that the issue of withdrawing Civil Application No. 304 of 2017 was in respect of the matter before the Court of Appeal. That the order is quite clear as it did not make reference to the High Court Misc. Land Application No. 84 of 2015 as suggested by Mr. Mtobesewa. He submitted further that all matters stated under paragraphs 13, 14 and 15 of the applicant's affidavit are not errors as suggested by the counsel of the respondent but they are matters of illegality apparent on the face of record and if confirmed, will certainly make the judgment of the Tribunal a nullity. Further that the 47 days have been accounted for on paragraph 12 of the applicant's affidavit.

Having gone through the submissions of the learned counsels, the main issue which the Court is supposed to determine is whether the applicant has adduced sufficient reasons for the court to grant the orders sought in the Chamber Application In his submissions, Mr. Rutabingwa main reason for the delay is that all along, the applicant was in the court

corridors pursuing the wrong approach. Further that soon after withdrawing of the notice of appeal by the order of the Court of Appeal dated 05th March 2020 and tracing of the record of the District Tribunal for necessary papers, this application was accordingly filed on the 21st April 2020. He argued that the applicants acted promptly. In rebuttal, Mr. Mtogesewa argued that the length of delay from 17/11/2015 when the decision of this court was delivered to the time the current application was filed is inordinate.

On my part, I will start with the ground that at all times the applicant was in the court corridors pursuing his rights. What I am seeing here is an applicant who is doing nothing but disturbing and inconveniencing the respondent herein who is also the decree holder. All the multiple proceedings filed in court prove that the applicant is not sure of that he wants to pursue. For instance, the applicant's ground for the delay to timely appeal against the decision of the Tribunal did not convince this court and that is why on 17/11/2017, Hon. Mjemma, Judge (as he then was) dismissed the Misc. Land Application No. 84/2015 seeking for orders to extend time.

After the dismissal of the above application, the applicant again delayed in filing an application for leave to appeal to the Court of Appeal against Hon Mjema's decision. Instead he lodged a Misc. Land Application No. 121/2016 seeking for extension of time to appeal against the said decision and an application for leave to appeal; both the applications were granted on the 24/05/2016. In the case of **Oswald Masatu Mwizarubi Vs. Tanzania Fish Processors Ltd CAT Civil Application No. 13 of 2010** (Mwanza Registry, unreported) cited with

approval the case of **Ratnam v Kumarasamy and Another** (1964) 3 ALL ER 933 in which Lord Guest stated thus:-

"The rules of court must, prima facie be obeyed, and, in order to justify a court extending the time during which some step-in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation."

As for the case at hand, having lodged a notice and been granted leave to appeal to the Court of Appeal, now in total abuse of court process, the applicant, on what he termed to as "an advice from his new advocate Mr. Rutabingwa" withdrew the application at the Court of Appeal on the mere ground that there are matters which touch on the legality of the decision of the tribunal. He could not convince the court as to why those matters were never brought to the attention of the High Court when the first application was lodged. If a successor advocate will have to rectify matters which were not presented before the court when the original application was filed and the court entertain such issues as grounds for extension of time then we shall have endless litigations because parties will be changing advocates just to remain in court corridors. If the previous advocate was not keen enough to convince the court on matters which would have otherwise been obvious, then the subsequent advocate cannot assume mandate and withdraw the case at the Court of Appeal because he thinks he will be the better advocate to argued and convince the court to grant the orders sought in an already dismissed application.

It must be borne in mind that in granting extension of time, not only are the grounds of delay important to convince the court, but we also have to look at the inconvenience and any prejudice that may be caused to the respondent if the extension is granted. Here the application was determined in 2015 and another subsequent application for leave granted, matter filed at the Court of Appeal and now the applicant wants to take the respondent back to an order dismissed in 2015 imply because a new advocates wishes so. By all means the conduct and for that matter this application is highly unfair to the respondent.

In addition to the above, I also agree with the argument advanced by Mr. Mtogesewa from 05/03/2020 when the order to withdraw the Notice of Appeal was granted up to 21/4/2020 when this application was filed is a period of more than 47 days which have not been accounted for. In the case of **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3/2007**, (unreported), the court of appeal held that;

*"Delay of **even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.**"*

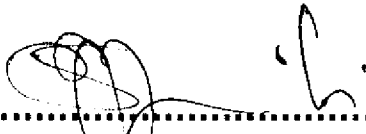
Indeed, the applicant has not adduced any reasons for this delay of 47 days. The applicant had not only failed to explain the delay of more than 60 days before filing the first application that was dismissed by Mjemba J, he had failed to explain the delay of more than 5 years from the time the decision of the Tribunal was delivered and has failed to explain a simple delay of 47 days from the time he withdrew his notice of appeal at the Court of Appeal to the time of filing this application.

Hence at this juncture it is safe to conclude that the applicant has failed to adduce sufficient reason to warrant the discretion of this court in

extending time. Consequently, the application is hereby dismissed with costs.

Application Dismissed

Dated at Dar es Salaam this 25th day of March 2021,


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S.M MAGHIMBI