

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 218 OF 2020
(Arising in Ilala Land and Housing Tribunal at Mwallmu House In from Land Appeal No. 93 of 2012)

SHEHE SALEHE.....APPLICANT

VERSUS

ROSE KILUVYA.....1ST RESPONDENT
IDD SALEHE.....2ND RESPONDENT

Date of Last Order: 15.03.2021
Date of Ruling: 19.04.2021

RULING

V.L. MAKANI, J

This application is for extension of time within which the applicant SHEHE SALEHE may file an application for revision in respect of the decision of Ilala District Land Tribunal in Land Appeal No. 93 of 2012 dated 28/06/2013.

The application is made under section 14(1) of the Law of Limitation Act CAP 89 RE 2002, section 51(2) of the Land Disputes Courts Act, 2002 as amended, sections 68(e) and 95 of the Civil Procedure Code CAP 33 RE 2002. The application is supported by the affidavit of the

applicant. The 1st respondent filed her counter-affidavit, but the 2nd respondent though he appeared and was given time to file counter-affidavit he did not do so.

With leave of the court the application was argued by way of written submissions. The applicant and the 1st respondent filed their submissions, but the 2nd respondent did not do so. In that respect he has waived his right of being heard and as such the matter proceeds ex-parte against him.

In his submissions the reason for the delay in filing the application for revision was that he became aware of the decision of the District Tribunal on 10/09/2019 almost 7 years after the said decision was made. He said he was not informed of the said decision which led to the execution of his property which he was not a party in the said appeal. He said the 1st respondent trespassed in his property. He pointed out that he was not a party to the decision of Chanika Ward Tribunal, which prompted the appeal at the Tribunal. Therefore he was neither a party to the proceedings at the Ward Tribunal nor District Tribunal, so he said he was condemned unheard.

Another reason for the prayer for extension as argued by the applicant was that there were illegalities in the decision of the District Tribunal which led to the execution orders for demolition of his property. He said illegality constitutes sufficient reason for extension of time regardless of whether or not reasonable explanation has been given by the applicant to account for the delay. He relied on the cases of **Etiennes Hotel vs. National Housing Corporation, Civil Reference No. 32 of 2005** (unreported) and the case of **Principal Secretary, Ministry of Defence & National Service vs. Devram Valambhia [1992] TLR 185**. He prayed for the application to be granted as prayed.

Ms. Lightness Raimos, Advocate from Tanzania Women Lawyers Association (**TAWLA**) drew submissions on behalf of the 1st respondent. Ms. Raimos said that the applicant has no locus standi to bring the application as he was not party in the Ward and District Tribunals. She cited the case of **MIC Tanzania Limited vs. Hamisi Mwinyijuma, Ambwene Yesaya & Cellulant Tanzania Limited, Civil Appeal No. 64 of 2016**.

In rejoinder the applicant said that Ms. Raimos failed to get the gist of his main submissions. He said he was neither a party at the Ward

or District Tribunal while the suit property belonged to him. He distinguished the case of **MIC Tanzania Limited** (supra) stating that decision was based on defectiveness of the Memorandum of Appeal and does not deal with an appeal. He prayed for the court to be guided by the principle that illegality of a decision constitutes sufficient reason for an extension of time.

I have gone through the affidavit and the submissions by the parties herein. It is a settled principle of the law that an application for extension of time is entirely the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (see **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported).

As observed in the affidavit and submissions, the applicant's main reason for extension of time is that the applicant was not aware of the decisions in the Ward Tribunal which led to the appeal at the District Tribunal and ultimately the execution order which resulted to the demolition of the applicant's property at the suit land. I agree with the applicant that he was neither a party in the Ward Tribunal nor at

the District Tribunal in Land Appeal No. 93 of 2012. He filed Land Application No. 421 of 2018 which was struck out as the Tribunal was functus officio. He therefore has a right to argue his case in respect of the suit land.

The applicant is also claiming illegality in that though the Ward Tribunal decision was on the property belonging to his brother the 2nd respondent but on appeal the decision also included the land belonging to the applicant. It is my considered view that, the decisions of the Ward and District Tribunals create an ambiguity as to the land subject of the dispute. In such a situation the intervention of the court for examination is necessary especially where the applicant was not a party in both the Ward and District Tribunals.

Unfortunately, as correctly stated by the applicant the submissions by the 2nd respondent did not address the circumstances of this application and equally the case of **MIC Tanzania Limited** (supra) is distinguishable as it relates to a defective Memorandum of Appeal.

In the result, the application is granted. The applicant is given **21 days** within which to file an application for revision. Costs to follow event.

A handwritten signature in black ink, which appears to read "V.L. Makani". The signature is written in a cursive style.

V.L. MAKANI
JUDGE
19/04/2021