

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

MISC. LAND APPLICATION NO.720 OF 2020
(Originating from Land Case No. 153 of 2012)

IKAJI MOHAMED BESTA (suing through
power of attorney of **ABDALLAH MASONDOLE**..... **1ST APPLICANT**

ZIADA MOHAMED suing through the
power of attorney of **ABDALLAH MASONDOLE****2ND APPLICANT**

VERSUS

VADBHAGH BUILDERS LIMITED.....**1ST RESPONDENT**

THE COMMISSIONER FOR LANDS.....**2ND RESPONDENT**

THE ATTORNEY GENERAL.....**3RD RESPONDENT**

Date of last Order: 21/06/2021

Date of Ruling: 29/06/2021

R U L I N G

MWENDA, J:

This is an application for extension of time within which to file an application for review against the judgment of the High Court of Tanzania (Land Division) in Land Case No.153 of 2012 dated 26th February 2018 due to elements of illegality regarding the said case. This application is made under Section 14(1) of the law of limitation Act, [Cap 89 R. E. 2019].

The brief facts of the matter are that the applicants were defendants in Land Case No. 153 of 2012. They were sued by the first respondent for double

allocation of Plot No. 1304 Block "G" Tegeta, Kinondoni Municipal in Dar es salaam City.

The applicants were represented by Mr. Iman Omar Madega, learned Advocate. Before hearing of case on Merits commenced the said case was scheduled for Mediation. On 26/02/2012 during mediation it was resolved that the first and the second defendants (1st and 2nd Applicants) would be allocated an alternative plot No. 284, Block 1 Located at Pemba Mnazi Temeke Municipal in Dar es Salaam by the Third and Fourth defendants (now the 2nd and 3rd Respondents). The Plaintiff (now the 1st Respondent) remained as the Lawful owner of the Landed Property in dispute as he had already exhaustively developed it. All parties involved endorsed their signatures on the deed of settlement including Mr. Iman Omar Madega, Advocate for the applicants.

In this application the applicants are seeking extension of time to file an application for review against the decision in Land case No. 153 of 2012. They are being represented by Abdallah Masondole through a power of attorney. On the other hand, the 1st respondent is represented by Mr. Evodius Rutabingwa, Advocate and the 2nd and 3rd respondents are represented by Ms. Neisha Shao, learned State Attorney.

In support of their application through written submission, the applicants submitted that in Land Case No. 153 of 2012 they were being represented by Mr. Madega, learned Advocate. In all stages of the matter their Advocate was giving them feedback but during mediation the said Advocate acted without express instructions on what the applicants wanted. They further submitted that the judgment entered on 26/02/2012 was defective in that they never took part in the settlement agreement or consent to its terms which make it a void settlement. Also, the said judgment lacking title "**JUDGMENT**" is fatal

and make the purported consent judgment illegal as it was signed by both the respondent's and applicant's Advocates who was not given express instructions to act as a signatory on behalf them (Applicants). They further submitted that since they were in England during that time in question and discovered of the defective judgment upon their arrival, then that is a good cause for grant of extension of time. In support to their arguments they cited **Transport Equipment vs. Valambhia & AG [1993] TLR 91 and AG &Others Vs. VG. Chavda, Civil Application No. 122/2014 [unreported]**.

In reply to the applicants' submission the Advocate for the 1st respondent objected this application for want of merits. He submitted that although it is the discretion of the court to grant extension of time, that discretion must be exercised judiciously where apart from sufficient cause being showed an applicant has to account for delay that is from 26/02/2018 when the Land Case No. 153 of 2012 was finalized to 15/12/2020 when this application was filed.

In support to this argument the learned Advocate cited the Case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of young women's Christian Association of Tanzania, Civil Application No. 2 of 2010.**

On the allegations by applicants that they were not informed of the status of the case by their Advocate, the counsel for the 1st respondent submitted that this is an afterthought hence insufficient reason to warrant grant of extension of time as they have failed to state how and when did they become aware of the status of Land Case No. 153/2012. Further he submitted that lack of diligence of an advocate is not a sufficient ground for extension of time and

in support thereof he cited the case of **Corporal Edward Augustine Kambi Vs. The Principle Secretary Ministry of Defense and National Service and Another, Civil Application No. 62 of 2011.**

Lastly the learned Advocate for the 1st respondent submitted that when entering a consent judgment, the court was satisfied that parties were well represented and capable of mediating the case and therefore since the applicants admit that they were represented by their Advocate, the same(Advocate) had authority to act on their behalf hence the allegations that they were not informed about the outcome of mediation cannot be used to infer illegality as intended.

On behalf of the 2nd and 3rd respondents, the learned State Attorney Ms. Neisha Shao resisted this application.

In opposing the applicants' application for extension of time the learned State Attorney submitted that the guidelines provided by **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of young women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (Supra)** are not fulfilled. The reasons are that the applicants failed to account for each day of delay which amounted to failure to advance good cause to justify extension of time, secondly a delay of about 2 years and 10 months is greatly inordinate in that being un aware of a position of the case for that period amount to negligence on the part of the applicant and lastly that failure of the applicants to personally take part in the settlement agreement. Also, the consent judgment missing the title "**JUDGMENT**" does not render the said judgment illegal as it have not prejudiced the right of any party. That omission is just a typographical error that do not warrant a

sufficient reason for extension of time. The learned State attorney further submitted that in the settlement agreement parties were effectively represented throughout their case and in mediation stage by their own advocates thus the allegation of illegality of the judgment is farfetched. Also, in their affidavit they have not stated that they disengaged their advocate before or during mediation and there is no affidavit from them or their advocates showing that there were no instructions to proceed with mediation. She concluded in her submission to the effect that these allegations are mere afterthought and prayed this application to be dismissed with costs.

Having summarized submissions from the applicants' and respondents side the key issue for determination is whether the applicant's affidavit discloses a good cause for extension of time.

It is on record that the consent judgment was entered on 26/01/2018 and all the parties were duly represented. The said judgment was endorsed with signatures of the parties' including one Iman Omari Madega, the applicants advocate. The applicants however allege that the said advocate had no instructions from them to participate in the mediation process. As rightly submitted by counsels for the respondents the advocate was acting on their behalf throughout the trial and mediation and there is no proof that at any point in time the applicants disengaged him. Also, there is no affidavit from the applicants themselves or their advocate stating there were no instructions to the advocate to take part in Mediation.

The applicant also alleged that since they were residing in England, they didn't know the outcome of the consent judgment until when they came across the said judgment. To them this factor should be taken and considered as a good cause in granting extension of time. However, they have failed to explain

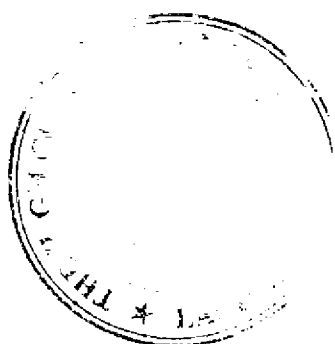
as to when did they discover the consent judgment. Again, from the day the consent judgment was read to the day this application was file is about 2 years and 10 months period but the applicants have failed to account for every day of delay. In **Lyamuya Construction Company Ltd V Board of Registered Trustee of young women’s Christian Association of Tanzania, Civil Application No. 2 of 2010 (Supra)** it was stated among other things that that in grant of extension of time the applicant must account for all the period of delay. In this application the applicants have failed to account for every day of delay and as such they have failed to advance good cause for extension of time.

Also the applicant submitted that failure of said judgment to bear a title **“JUDGMENT”** is fatal and renders the judgment illegal to warrant grant of extension of time but this court observed the contents of the said judgment is satisfied that there is no injustice that was occasioned on the applicants side as that omission is a typographic error.

Having so analyzed the submissions by both sides, I am satisfied that the applicant has failed to advance good cause for extension of time and their application have no merits and is hereby dismissed with costs.

It is so ordered.

DATED at DAR ES SALAAM this 29th day of June, 2021.



A. Y. Mwenda
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JUDGE
29/06/2021