

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO.563 OF 2020**

(Originating from Land Application No. 98 of 2010, before District Land and Housing Tribunal for Morogoro at Morogoro)

**SOFIA MRISHO MADENGE (Administratrix of the Estate of the late Omary Madenge) .....APPLICANT**

**VERSUS**

**HAMIS MWINYIMBEGU.....RESPONDENT**

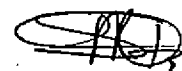
**CORRECTED RULING**

**OPIYO, J**

This application was brought under sections 14 and 26 (c) of the Law of Limitation Act, Cap 89 R.E 2019 and Order XLII Rule 1(1) (b) and section 95 of the Civil Procedure Code, Cap 33 R.E 2019. The applicant above in is seeking to extend time for her to apply for a review of the judgment and order made in the Land Appeal No. 18 of 2017, costs of the application and any other relief this court will think fit to grant. It was accompanied by the affidavit of the applicant's counsel, Israel Simba. On the other hand, the respondent who enjoyed the legal services of the learned Advocate Juma Nassoro filed his counter affidavit opposing the instant application thereby leading into hearing of the application through written submissions.

Mr. Israel Simba after praying for his affidavit to be adopted, insisted that the applicant has delayed to file her intended application due to the fact that she has been all along diligently pursuing another application for review before this court vide Misc. Land Application No. 838 of 2018 which was then withdrawn on 12<sup>th</sup> June 2018. Therefore, her delay was caused by reasons which are beyond her control. Mr. Israel added that, he is representing the applicant on pro bono means after being requested by the Tanganyika Law Society (TLS) to do so. Prior to agreeing to represent the applicant, Mr. Israel had to consult the TLS and the response from them took some time and above all he had been sick and regularly attending treatments at Muhimbili National Hospital and TMJ. These facts led to further delay.

In reply, Mr. Juma Nassoro for the respondent was of the view that, the applicant has failed to provide a sufficient cause for the delay. The decision intended to be reviewed was delivered on 24.11.2017, five years have passed, while the Misc. Land No. 838 of 2018, the one which the applicant claim to have been diligently pursuing was withdrawn on 12.6.2020 for reasons that it was filed outside the prescribed time. Based on this sequence of events, it is evident that the applicant is abusing the legal process with intention to deprive the respondent his right to enjoy the fruits of the decree which gave him the land in question. He argued further that, the argument by the applicant's counsel that he delayed to file the application because he was seeking consultation with TLS and that he was sick is devoid of merits as there is no proof to that effect, therefore this application should be dismissed.



In rejoinder, the applicant's counsel reiterated his submissions in Chief and added that, based on the events occurred as submitted earlier plus the death of the original applicant, it is wrong to say as that the applicant has not been prosecuting her case diligently. He insisted that, the issue is not about abusing court process by the applicant, but pursuing her constitutional right provided for under Article 13 (a) of the Constitution of the United republic of Tanzania, of 1977.

Having gone through the submissions of the parties through their Advocates as well as the affidavit in support and counter affidavit against the application at hand, the issue need of determination is whether the application has merit or not. For the applicant to succeed in this application she is supposed to satisfy this court that she had a sufficient reason that caused her to delay in pursuing her intended cause.

I am aware that, there are no rules laid down providing as to what constitutes a good cause, rather we rely on circumstances of each case **(see OSWALD MASATU MWIZARUBI versus TANZANIA FISH PROCESSORS LTD CAT Civil Application No. 13 of 2010 (Mwanza Registry, (unreported))**. In the instant application, the applicant had failed to persuade this court to believe on his reasons that are sufficient enough to warranty allowing this application. What was argued by the applicant's advocate that the applicant has been all along diligently pursuing another application for review before this court vide Misc. Land Application No. 838 of 2018 which was then withdrawn on 12<sup>th</sup> June 2018 and further that, the applicant's advocate had to consult the TLS before taking the case and later he falls sick are mere words which this court cannot take into consideration in granting this application. From June

2018 when Misc. Land Application No. 838 of 2018 was withdrawn to October 2020 when this application was filed is about two years, this time was not accounted for properly.

Not only that, it has to be noted that, this application is for extension of time to file application for review out of time. Review is the remedy available only under special circumstances. It is not a matter of right for any kind of dissatisfaction with the decision like an appeal and it is not an alternative to appeal. Therefore, in application for extension of time to file review, the applicant need not only give sufficient reasons for delay, but also, he is required to prove that, the prospective application for review is attainable in the first place. That is, a proof that there conditions for praying for review have been met otherwise, it is of no use to extend time to file unattainable application. This is settled position in the case of **Deocratias Nicholas @ Jeshi & Joseph Mkwano v The Republic, Criminal Application No: 1/2014 CAT (unreported)** which cited with approval the case **Laureno Mseya V. Republic, Criminal Application NO. 8 of 2013** (unreported) for a categorical holding that:-

*"an application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for the delay but has also established by affidavit/ evidence, at that stage either explicitly or implicitly, that the review application would be predicated on one or more of the grounds mentioned in Rule 66 (1) and not on mere persona/ dissatisfaction with the outcome of the appeal "*

In the instant application no attempt has been done in the affidavit to give facts supporting the attainability of the prospective application for review. This leaves the court with nothing to put fingers on in determining whether to extend time or not to file the application for review. This adds to the failure of the applicant to support her application with sufficient reasons warranting granting the same. For the reasons. The application is dismissed for lack of merits with no order as to costs.



A handwritten signature in blue ink, appearing to read "M. P. OPIYO", positioned above a horizontal line.

**M. P. OPIYO,**  
**JUDGE**  
**9/7/2021**