

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

**MISC LAND APPLICATION NO. 26 OF 2021**

*(Arising from Original Land Case No. 115 of 2010)*

**ZAITUN HAMISI ALI.....APPLICANT**

**VERSUS**

**KAISI HAMISI** *(Suing as Administrator of the  
Estate of the late HAMISI ALI)*.....**RESPONDENT**

**RULING**

*Last Order: 25/06/2021  
Date of Ruling 02/07/2021*

**B. E. K. MGANGA, J**

On 15<sup>th</sup> January 2021, the Applicant filed this application seeking for extension of time within which to file application to review the decision of this court (R. E. S. Mziray, J as he then was) that was delivered on 22<sup>nd</sup> July, 2015 in Land Case No. 115 of 2010. The Application is supported by an affidavit of Zaituni Hamisi Ali, the Applicant. Kaisi Hamisi (suing as Administrator of the Estate of the Late Hamisi Ali), the Respondent filed the counter affidavit to object the application. The Applicant was the defendant (now judgment debtor) in Land Case No. 115/2010 while the Respondent was the Plaintiff (now decree holder) in the said Land Case.

When the application came for hearing on 25<sup>th</sup> June 2021, the parties preferred to proceed by way of written submissions as a result an order was issued to that effect. Both parties filed their written submissions as it was ordered. In her written submissions, the Applicant adopted her affidavit to form part of her submissions. In order to be brief and focused in this ruling, I found it worth to reproduce hereunder paragraphs 4, 6, 7 and 8 of the Applicant's affidavit.

*"4. That, the decision contains defects or apparent errors on the face of records which require to be reviewed by the court.*

*6. That, joint tenancy or joint ownership does not allow inheritance but full ownership remains to the surviving joint owner of the landed property.*

*7. That, I have discovered that the decision was entered in total disregard of the law or by forgetfulness of the law.*

*8. That, the legal remedy available is to seek for extension of time for review to remove illegalities, errors and irregularities of the decision".*

In in the said written submission, the Applicant has argued that she **obtained the copy of judgment on 11<sup>th</sup> January 2021**. She cited section 19(1), (2) and (3) of the Law of Limitation Act [Cap. 89 R.E. 2019] to show that the time she was waiting to be supplied with a copy of the judgment has to be excluded. Not only that but also, section 14(1) of Law of Limitation Act [Cap. 89 R.E. 2019] and sections 93 and 95 of the Civil Procedure Code [Cap. 33 R.E. 2019] were cited to impress that I have power to extend time for review. It is submissions by the Applicant that there are good, sufficient and reasonable grounds for this court to extend time as prayed for.

On the other hand, the Respondent averred in paragraphs 5 and 8 of the counter affidavit that the judgment and decree were pronounced on 22<sup>nd</sup> January 2015 and that this application was filed six year thereafter. Counsel for the Respondent has submitted that, there is no account for delay in the Applicant's affidavit. He argued that each single day of delay was supposed to be accounted for by the Applicant. He cited the case of ***Interchick Company Ltd vs. Mwaitanda Ahobokiie Michael, Civil Application No. 218 of 2016 CAT*** (unreported) to support his arguments. He further submitted that the Applicant has failed to state as to when she discovered the alleged error mentioned in her affidavit. Counsel submitted that it was mandatory for the Applicant to account for all events and give account on their occurrence date(s). He therefore prayed the application be dismissed.

I understand that extension of time is a discretion of the court, but it has to be exercised judiciously. The court of Appeal in the case of ***Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, CAT – Civil Application No.2 of 2010 (unreported)*** has propounded important conditions that has to be considered by the courts in determination applications for extension of time as follows:-

*" (a) The applicant must account for all the period of delay*

*(b) The delay should not be inordinate*

*(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take*

*(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged."*

I am further guided by the decision in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) where the Court of Appeal held:-

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

I have examined the affidavit and the counter affidavit together with the written submissions of the parties and consider them together with the laws and cases cited to me in order to reach an informed decision. I am of the settled mind that in applications like the one at hand, the Applicant is duty bound to bring evidence through affidavit(s) showing the reason(s) for the delay. That evidence cannot come from the bar through submissions. On the other hand, the party who is objecting the application has to bring evidence through counter affidavit(s) and not through submissions.

The judgment and decree the Applicant is aspiring to be reviewed was delivered ***on 22<sup>nd</sup> July 2015 that is almost six (6) years ago.*** Nothing was mentioned by the Applicant in her affidavit as to when she became aware of existence of the said judgment and decree and when exactly she applied for. In her affidavit, it is not indicated as to when she was supplied with the said judgment and decree. It is only indicated in her written submissions that she was supplied with the copy of judgment and decree on 11<sup>th</sup> January 2021. I will not consider that the 11<sup>th</sup> January 2021 is the date she was supplied with a copy of judgment and decree for obvious reason that this is not in her affidavit. It is only in her submissions which, are not evidence. In absence of the contrary evidence as to the date the Applicant was supplied with a copy of the judgment and decree, I take the date indicated in the decree namely 22<sup>nd</sup> July 2015 to be the date she was supplied with or became aware of. I am of that view because under normal circumstances, parties are required to be present personally or by their legal representation on the date of judgment especially when

the matter is touching personal interest like the case at hand. It is illogical that for almost six years the Applicant was unaware of existence of the said judgment and decree. Nothing has been said by the Applicant in her affidavit as to whether at all that time she was outside the country or not, for the court to form an opinion that probably, she was not in a position to become aware. This, and her failure to account for each delay in her affidavit, cannot justify me to use inherent powers under section 95 of the Civil Procedure Code [Cap. 33 R.E. 2019] that I was invited to. In the upshot, I have found that, there is no merit in the application.

For the foregoing, I dismiss the Application with cost.,

Order accordingly.

Dated at Dar es Salaam this 30th day of June 2021.



A handwritten signature in black ink, appearing to read 'B.E.K. Mganga'.

**B.E.K. Mganga**

**JUDGE**

**02/7/2021**