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

MISC LAND APPLICATION NO.535 OF 2020
(Originating from Kibaha District Land and Housing Tribunal in Land Application No.27 of 2012 and Misc. Application No.15 of 2020)

SEGORINA P. KIWANGO.....1ST APPLICANT
SEVERIN MTENGA.....2ND APPLICANT
FRIMINI MANGASHI.....3RD APPLICANT

VERSUS

DANIEL MATERU.....1ST RESPONDENT
M/S MSOLOPA INVESTMENTS
COMPANY LIMITED.....2ND RESPONDENT

Date of Last Order: 02.08.2021
Date of Ruling: 30.08.2021

RULING

V.L. MAKANI, J

The applicants have moved this court under section 14 of the Law of Limitation Act RE 2002 seeking extension of time to file application for revision out of time against the decision of Kibaha District Land and Housing Tribunal (the **Tribunal**) in Land Application No.27 of 2012 (Hon. Njiwa Chairman). The application is supported by the affidavit sworn by the first and the third applicants on behalf of the second applicant. The 1st Respondent swore counter affidavit in opposition.

This application proceeded by way of written submissions. Mr. Roman Selasini Lamwai, Advocate drew and filed submissions on behalf of the applicants; while Mr. Mvano M. Mlekano, Advocate drew and filed submissions in reply on behalf of the 1st respondent. The matter proceeded ex-parte against the second respondent as she did not file any reply.

Submitting in support of the application, Mr. Roman said that one of the officers of Local Government in Husika Street received a notice (**Annexure A1**) on behalf of Severini Mtenga and Frimini Mangashi requiring them to demolish the developments made on land the subject matter of the execution proceedings within 14 days. That the notice was addressed to the 2nd and 3rd applicants and arose out of Land Application No.15 of 2020. That the notice did not cite Misc. Land Application No.15 of 2020 which was application for execution filed by the 1st respondent nor the copy of the warrant enclosed with the notice. He added that the decree was ambiguous since the proceedings, and judgment did not state categorically where execution should take place. He said that the written statement of defence by the 1st respondent did not incorporate the counter claim.

He therefore insisted that the decree is ambiguous as to where the execution should take place and the order is illegal as it comprises orders which were not pleaded.

Further, Mr. Roman said that, the 1st applicant who is in possession and owner of the land which is about to be executed was not served at all and was not part of the application. That even the 2nd and 3rd applicants did not sign the original Land Application No.15 of 2020 on behalf or under instruction of the 1st respondent. He insisted that the 1st applicant was not part to the original application, and she was not given the opportunity to be heard.

Counsel further argued that the general position of the 1st respondent is that the 2nd and 3rd applicants were to serve the 1st applicant with notices of the proceedings as they were the respondents in the original application. He added that the suit filed by the 3rd applicant involve the property which the 2nd and 3rd applicants had common interest and the property which is about to be executed is the one with joint interest of the 1st applicant but the 2nd applicant has no interest on it and it is not the property involved in the original suit. He insisted that the 1st applicant was not impleaded in the main

application and as impliedly conceded by the 1st respondent, there is no way he could have known of the existence of the case. That the 1st applicant came to know about the existence of the decision of the Tribunal on 08/09/2020 and the current application was filed on 21/09/2020, thirteen days thereafter. He said that this application has therefore been preferred promptly and he relied in several cases including the case of **MZA RTC Trading Company Limited vs. Export Trading Company Limited, Civil Application No.12 of 2015** (unreported) in which it was held that in an application for extension of time, the court in exercising its discretion must have sufficient material before it to account for the delay. The applicant must also show diligence in prosecuting the intended action.

On the issue of illegality Mr. Roman said that the original application does not identify the disputed land and the 1st applicant would definitely lose her landed property if she is not part of the original application and thus not served with the notice to defend the property. Counsel insisted the 1st applicant has a right to be heard and cited Article 13 (6) of the Constitution of the United Republic of Tanzania as amended from time to time. He prayed for the application to be granted with costs.

In reply, Mr. Mvano prayed to adopt the contents of counter affidavit together with its annexures. He said that revision is not an alternative to appeal and therefore this application ought to be dismissed with costs. He said that the 2nd and 3rd applicants admitted having sued the 1st respondent in Land Application No. 27 of 2012 at Kibaha District Land and Housing Tribunal of which they lost. He said that they had a right to appeal but choose to sit on it until the time lapsed. That they applied for extension of time to appeal in Land Application No.160 of 2017. He said that he does not believe that the 1st applicant was not aware of the Land Application No.27 of 2012 as she swore joint affidavit with the people whom she claim and did not implead her in the original case and who appeared to be represented by the same law firm since the beginning of the case. That the aim is to frustrate the 1st respondent from executing the decree. He said that even if the 1st applicant was not aware of the dispute, she cannot apportion that blame to the 1st respondent who was just a defendant in the original case. He said that even the case of **MZA Trading Company Limited** (supra) supports his argument.

Counsel for respondent further argued that, allegation by the applicants that there is illegality are mere words. He said neither the Tribunal proceedings nor the alleged impugned decision have been attached to form part of the applicant's submission, which automatically draw an adverse inference to the applicant allegations. He said that the one who alleges must prove. He said that it is a settled principle that for the illegality to be ground for extension of time, there must be apparent errors on the face of the record. He relied on the case of **Omary Ally Nyamalege & 2 Others Vs Mwanza Engineering Works, Civil Application No.94 of 2017 (CAT-Mwanza)** (unreported) and insisted that the applicant has not advanced sufficient reasons for extension of time. He said even the 1st applicant's contention that she was denied right to be heard is an afterthought as she could have filed objection proceedings to contest the execution if she really had a genuine claim, however she chose not to follow that path instead she claimed to be condemned unheard. He insisted that applicant has not accounted for each day of delay. He therefore prayed for this application to be dismissed with costs.

In rejoinder, Mr. Roman reiterated his main submissions and added that the applicant had been in possession of the suit property

undisturbed by the respondents and that none of the information about the case was communicated to her either by the respondents or the 2nd and 3rd applicants. He insisted that the burden to prove that the suit property was matrimonial cannot be ascertained in the present application without giving the 1st applicant right to be heard by way of extending time to file revision in which she can show her contribution.

Having considered affidavits and submissions from both parties, the main issue for determination is whether this application has merit.

The main reasons adduced by the applicants for his delay to file revision is that she had late knowledge of the eviction and demolition order as she was not part to the Land Application No.15 of 2020.

It is not disputed by both parties that Misc. Land Application No.15 of 2020 (application for execution) is a result of Land Application No.27 of 2012 in which the 2nd and 3rd applicants unsuccessfully sued the 1st respondent. It is also not in dispute that the 1st applicant was not party to the said Land Application No.27 of 2012. The records further show that in Misc. Land application No.15 of 2020 the applicant was

Daniel Materu (the 1st respondent herein) and respondents were Severin Mtenga and Frimini Mangashi (the 2nd and 3rd applicants herein). It is apparent that the 1st applicant herein was not party to the said Misc. Land Application No.15 of 2020. The result in Misc. Land Application No.15 of 2020 was the issuance of eviction and demolition order (**Annexure A2** and **Annexure DM 1**). The records further reveal that the notice of eviction order was issued by the 2nd respondent on 03/09/2020 and received by Kongowe Local Office (*Afisa Mtendaji Mtaa wa Kongowe*) on 08/09/2020. That is the day when the 1st applicant alleged to have knowledge of the eviction order. What is consider is that the 1st applicant was not party to the previous applications concerning the suit property of which she is also alleged to have interest in it. The applicant in paragraph 8 of her affidavit stated that she is in actual possession of the suit property which is subject of the execution and that she jointly developed it with the 3rd applicant, therefore the 1st applicant being not a party to the previous applications means that she had no chance of defending what she alleges to be her interest in the suit property.

Having established that the 1st applicant was not a party to Land Application No. No.27 of 2012 and Misc. Land Application No.15 of

2020, the question now is whether she preferred this application promptly. As afore stated, the records shows that the notice of eviction was received on 08/09/2020, the day on which presumably the notice of eviction order came into knowledge of the applicant. Exchequer Receipt No.24893273 shows that the application at hand was filed on 22/09/2020, that is 13 days from when the date the notice of eviction was received. In my view, the applicant acted promptly in filing this application.

On the issue of illegality, as correctly stated by Mr. Mvano illegality must be rightly on the face of the records. Since there is no substantial evidence of the said illegality, this court cannot rule with certainty that there was such illegality.

Basing on the above, I find the application to have merit and is hereby granted. The applicants to file revision within **30 days** from the date of this ruling. There shall be no order as to costs. It is so ordered.

V.L. MAKANI
JUDGE
30/08/2021