

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO 151 OF 2019  
(Arising from Land Application No.431 of 2006)**

**HAMIS ATHUMANI HAMIS.....1<sup>ST</sup> APPLICANT  
JAMES FRANCIS MBATIA.....2<sup>ND</sup> APPLICANT  
ALLY RAMADHANI MOHAMED MAGANA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**MACFARLANE MSECHU.....1<sup>ST</sup> RESPONDENT  
MERYCELINA MSECHU.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 27.10.2021  
Date of Ruling 15.12.2021

**RULING**

**V.L. MAKANI, J**

The applicants named above are applying for enlargement of time within which to file an application for revision out of time against Land application No. 431 of 2006 dated 21/12/2006 from Kinondoni District Land and Housing Tribunal (the **Tribunal**)

The application is made under section 93 of the Civil Procedure Code Cap 33 RE 2019 (the CPC). This application is supported by an affidavit sworn by the 1<sup>st</sup> and 3<sup>rd</sup> applicants.

The application proceeded by way of written submissions. Mr. Nashon Nkungu, Advocate drew and filed submissions on behalf of the applicant while Ms. Rose Njau, Advocate drew and filed submission in reply on behalf of the 2<sup>nd</sup> respondent.

Submitting for the application, Mr. Nkungu prayed to adopt the contents of the applicant's affidavit and added that, initially the applicants herein applied for extension of time to file revision vide Misc. Land Application No.977 of 2017, which application was struck out. He said the court directed that the application be made under section 93 of the CPC as the application was previously granted and the applicants were given 60 days to file their application, but they did not do so. That bringing this application was in compliance with court's directives in Land Application No.977 of 2017.

Mr. Nkungu said section 93 of the CPC gives the court discretionary powers to grant extension of time. He said the applicants have always been in court prosecuting their matter and in the intended revision there are points of law that needs attention of the court. He said that letting proceedings in Land application No.431 of 2006 that have already been found by this court to be incorrect will be condoning

injustice. That the impugned proceedings are illegal so is the judgment and orders. That it is the principle of natural justice that a party to the suit should not be condemned unheard therefore it is fair and just that the applicant be given opportunity to appear and present their side of the case. That the allegation that the 1<sup>st</sup> respondent is dead has not been justified since there is no proof in the records. That even if the court choose to believe that the 1<sup>st</sup> respondent is dead, but he was served with the summons and an advocate showed up on his behalf confirming the service. He said court's order should be respected but the respondent chose to defy the orders to the detriment of the applicants. Counsel prayed for the application to be granted.

In reply, Ms. Njau said that the applicant is abusing courts process. She said in Land Application No.16 of 2013 the applicants were granted 60 days within which to file an application. That the applicants ignored such order and they filed it after one and a half years later. She said Misc. Land Application No.997 of 2017 was determined and the delivered on 30/11/2018 and the application at hand has been filed on 21/03/2019 which is more than 80 days thereafter. She said the applicants have failed to adduce reasons for



their failure to comply with court orders, and she insisted that court orders must be obeyed.

Ms. Njau said that the applicant is trying to say that while leave was granted, the 1<sup>st</sup> respondent had already filed Land Application No.271 of 2012 which prevented them from proceeding with the application. She said a keen looking at the records would reveal that the applicants filed Misc. Land Application No.16 of 2013 for extension of time to file revision while Misc. Land No.271 of 2012 was still pending therefore they were not at all prevented to proceed. She said they had an opportunity to file the application within the stipulated time and let the respondents raise the issue of res sub-judice which could not have applied since the application was not on the same issues, subject matter, and parties. She said in exercising discretionary powers the court should consider the length of delay by the applicant. She insisted that such kind of application was previously determined by this court and the applicant were granted 60 days within which they did not act since 2015. She said the applicants have not accounted for such length of delay. She prayed for the application to be dismissed with costs.

The issue for determination is whether the applicants have adduced sufficient reasons for enlargement of time within which to file the application for revision.

The applicants' reasons for failure to file the application for revision are contained in paragraph 9 and 10 of affidavits. That the applicants were not parties in Land Application No.431 of 2006 and that though they were previously granted 60 days to file the application for revision vide Misc. Land Application No.16 of 2013 there was another pending Misc. Land Application No.271 of 2012 by the 1<sup>st</sup> respondent which was at the hearing stage; and this barred them from filing the application as the said Misc. Land Application No.271 of 2012 was on the same issues, subject matter and parties.

It is now a settled principle of law that in determining an application for extension of time the court examines if the applicant has adduced sufficient reasons for the court to grant the application sought. The court must exercise its discretion in granting such an application. In the case of **Yusuf Same & Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002) (CAT-DSM)** (unreported), the Court of Appeal stated:

*"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to "sufficient cause" has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant".*

According to the records, the applicants herein were not parties to Land Application No. 431 of 2006. Considering that the applicants alleged to have interest in the suit property, the court granted extension of time to the applicants to file the said application for revision vide Misc. Land Application No.16 of 2013. However, the applicants did not file the said application within time claiming that there was ongoing Misc. Land 271 of 2012. The applicants filed another application Misc. Land Application No.977 of 2017 which was struck out. Now, even if the applicants are alleging that they have all this time been in court corridors pursuing their rights, the court shall consider the time from when the last application Misc. Land Application No. 977 of 2017 was struck out on 30/11/2018 to the date when this application at hand was filed on 02/03/2019. This is a period of more than 90 days and this period has not been accounted



for by the applicants. They have not stated the reasons for the delay.

In the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT-Arusha)** (unreported) the court stated:

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

In this present application, the applicants have failed to account for the 90 days of the delay.

For the reasons addressed above, this application is without merit and it is hereby dismissed with costs.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**15/12/2021**

