

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 172 OF 2021

(Arising from decision of DLHT for Kibaha at Kibaha in Application No. 63 of 2011 dated 20/10/2015)

MWANAISHA KIDODI.....APPLICANT

VERSUS

YAHAYA ABDALLAH SALEHE.....1st RESPONDENT

**NASSOR ABDALLAH SALEH &
YAHAYA ABDALLAH SALEH**

(Administrators of the estate of the late

ABDALLAH SALEHE ABOUD).....2nd RESPONDENT

RULING

14/11/2021 & 13/12/2021

Masoud, J.

The applicant is an old woman of 89 year of age. For about three decades now she has seemingly been battling for her rights over a surveyed piece of land situated in Bagamoyo old town. The piece of land is described as Plot No. 39, Old Bagamoyo Town which the respondents also claim to have interests.

The present application arise from the decision of District Land and Housing Tribunal of Kibaha at Kibaha delivered on 20/10/2015 in Application No. 63 of 2011. The decision dismissed the applicant's suit which she brought against the respondents over the suit plot. She is aggrieved by the decision. As she is out of time to lodge an appeal to the Court of Appeal, she filed the present application under section 41(2) of the Land Disputes Courts' Act, cap. 216 R.E 2019.

Her affidavit supporting the application set the background. It also described reasons for the application. The respondents filed counter affidavits opposing the application and the reasons given. The background is to some extent captured in Paragraph 2 of the affidavit. It gives the details of the cases in which the suit property was involved. In so doing, Bagamoyo Primary Court Civil Case No. 36 of 1998; Bagamoyo District Court Civil Case No. 13 of 2001; and High Court (Dar) Civil Appeal No. 233 of 2005 are mentioned in relation to jurisdictional issues.

The reasons adduced in order to convince the court to exercise its discretion in favour of granting the extension are apparent in the affidavit and the written submissions filed by the applicant. In my understanding, the first reason was that the applicant attributed the

period of delay to the delay in getting copies of the judgment and decree of the District Land and Housing Tribunal for Kibaha at Kibaha delivered on 20/10/2015. In her affidavit, the applicant demonstrated the efforts she undertook to get the copies.

The second reason was that being old as she was, she was suffering from diabete and blood pressure. There were medical chits which accompanied the affidavit as well as her birth certificate evidencing that she was born on 10/07/1932 at Bagamoyo. The third reason was seemingly that she was dependent on legal aid in taking necessary action. In his affidavit, she demonstrated for instance how she benefitted from the law day legal aid services in having the present application filed. The fourth reason was the allegations of malpractices on the part of the tribunals, which according to her, led to the delay. She therefore stated that the delay was not a result of her inaction or negligence.

I should add that in the written submission, the applicant also expounded on illegality associated with the alleged Mwambao primary court decision in "**Shauri la Madai Na. 36 of 1998**" which declared the second respondent lawful owner of the said Plot No. 35 Old Bagamoyo. On this point, the applicant also referred the court to the

decision of this court in Civil Appeal No. 233 of 2005 in which the decision of the district court of Bagamoyo in Civil case No. 13 of 2001 was quashed and set aside on the ground that the district court did not have jurisdiction on land matters. In her submissions, the applicant wondered as to whether the Mwambao Primary Court had jurisdiction to enter a dispute over ownership of a surveyed land and seemingly whether the issue was looked into by the trial district tribunal.

The other aspect of illegality advanced was in relation to the alleged failure of the district tribunal to comply with the order of this court in Civil Appeal No. 233 of 2005 which ordered the applicant's claim to be entertained by a competent forum and hence the district tribunal.

The instances of illegality above shown were in my view implied in paragraphs 3 and 4 of the applicant's affidavit. I need not reproduce the relevant contents of the said paragraphs.

The counter affidavits filed by the respondents did not benefit from submissions from the respondents as no submission was filed pursuant to the order of the court. The oral application which was made after the prayer by the applicant to have the matter set for ruling on account of

the failure by the respondents to file the submission was rejected as the prayer was an afterthought.

The only reasons advanced in the counter affidavit opposing the granting of the application were to the effect that it was not true that there was delay in issuing copies of the judgment and decree as alleged. It was in this respect contended that the said copies were supplied to the applicant. As a result of getting such copies, the applicant, it was stated, filed Misc. Land Application No. 682 of 2016, which application was withdrawn on 20/3/2017 with leave to refile.

The other reason advanced against the application was that the allegation of sickness was supported by forged medical chits because they did not indicate the hospital that the applicant attended. The respondents in their counter affidavits did not however dispute that the applicant is an old woman aged 89. Likewise, the averment that the applicant was not negligent and guilty of inaction was not disputed in any way as was the allegation of illegality implied in paragraphs 2,3 and 4 of the applicant's affidavit and expounded upon it the unopposed written submission in chief. Be that as it may, the failure by the respondents to file replying written submissions meant that the

respondents did not appear for the hearing of the application despite filing the counter affidavits herein considered.

I have thoroughly considered the submissions in chief duly filed by the applicant against the backdrop of the affidavit supporting the application and the counter affidavits. On the strength of the undisputed age of the applicant which I have no doubt makes her susceptible to ill health conditions in the likes of pressure and diabetes to mention but a few, I am inclined to find in her favour on this reason and against the allegation of forged medical chits. None theless, having examined the copies of medical chits accompanies the affidavit, I was not convinced that I should find that they are forged just because the name of the hospital attended is not visible in the chits.

I have had regard also to the allegation of illegality which I am satisfied that it is implied in paragraphs 2, 3 and 4 of the applicant's affidavit, and it is apparent in the face of record of the impugned decision of the district tribunal which heavily relied on an alleged demolition order directing the District Commissioner for Bagamoyo to demolish the applicant's building.

I am in my finding in relation to the claim of illegality guided by the case of **Andrew Athuman Mtandu and Another vs Dustan Peter Rima**, Civil Application No. 551/01 of 2001 referred to me by the applicant, which authoritatively stated and I quote:

...It is settled law that a claim of illegality of the impugned decision constitute good cause for extension of time regardless of whether or not reasonable explanation has been given by the applicant to account for the delay.

The alleged illegalities aside, and as already stated by reason of age, and the stated ill healthy, I am convinced that the applicant could not have efficiently made appropriate follow up. This could also sufficiently constitute a good cause. I am in this respect mindful of the circumstances of the present application, and inspired by **Valerie McGivern v Salim Fakhrudin Dilal** Civil Application No. 11 of 2015 Tanga CAT where it was stated that:

The law is settled....that no particular reason or reasons have been set out as standard sufficient reasons. What constitutes good cause cannot therefore be laid down by hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case

At this juncture, I am satisfied that the applicant provided sufficient materials to warrant this court to exercise its discretion in the favour of granting the extension.

As to the A concern raised as to confusion in the use of the applicant's name, I think the anomaly is curable by the doctrine of overriding objective in so far as the record shows that the applicant has at times been referred by such names. Nonetheless, I did not see if such confusion has occasioned any failure of justice. By and large, there was nothing from the respondents implying impersonation.

When all is said and done, I find the application meritorious in the circumstances.

In the results, I would as I hereby do so allow the application with costs. The applicant is, accordingly, given 45 days within which to file her intended appeal.

It is ordered accordingly.

Dated at Dar es Salaam this 13th day of December 2021.


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B. S. Masoud
Judge

