

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

MISC. LAND APPLICATION NO. 57 OF 2019

WILBROAD KANYANA.....APPLICANT

VERSUS

MICHAEL N. KAPUFI.....1ST RESPONDENT

HIYARI CHONA.....2ND RESPONDENT

MUNICIPAL DIRECTOR KINONDONI

MUNICIPAL COUNCIL.....3RD RESPONDENT

AHMEDI MIAKAMINGI.....4TH RESPONDENT

IMMACULATE ZACHARIA.....5TH RESPONDENT

MR. BANA.....6TH RESPONDENT

RHINO INVESTMENT COMPANY LIMITED.....7TH RESPONDENT

Last Order: 27/10/2020

Ruling date: 12/02/2021

R U L I N G

MANGO, J.

Before me is an application for extension of time to file revision proceedings against the ruling of the District Land and Housing Tribunal for Kinondoni in Misc. Land Application No. 520 of 2017. The Application is by way of Chamber Summons made under section 14(1) of the Law of Limitations Act,[CAP. 89 R. E. 2019], supported by an affidavit sworn by

the applicant, **WILBROAD KANYANA**. The application is opposed by the first and the third respondent.

The applicant was represented by Mr. Amini Mshana, learned advocate, the first respondent was represented by Mr. James Mwenda, learned advocate while the third respondent had services of Ms. Leah Kimaro, learned Municipal Solicitor. The application was argued by way of written submissions.

In its ruling dated 8th October 2018, the District Land and Housing Tribunal dismissed the applicant's application for stay of execution. Among the reasons for the dismissal as contained in the ruling of the District Land and Housing Tribunal include, failure of the applicant to prove existence of the alleged appeal to the Court of appeal in respect of the matter before the tribunal and the issue of balance of convenience.

On the issue of balance of convenience the District Land and Housing Tribunal considered time taken in adjudication of this matter and difficulties faced by the respondent. The Hon. Chairman had this to say at page four to five of the ruling;

"The matter took long time, this tribunal decided in favour of the 1st respondent since 24/11/2011 and the High Court decided on 27th June, 2014 the 1st respondent is still living in difficult situation, his car was locked inside the house as there is no way to pass, on balance of convenience the 1st respondent's is the one who suffer as a result of these delay because his car was left to rot in the house....It is time now for the respondent to enjoy the fruits of the decree awarded seven years ago."

It is not disputed that the applicant failed to file revision application against the ruling of the Trial Tribunal on time. The law requires the applicant to account for his delay with a sufficient cause in order to move the court to exercise its discretion and grant extension of time.

In his submission in support of the application, Mr. Mshana adopted the contents of the affidavit filed in support of the application. According to the applicant's affidavit and submission by his advocate, he failed to file revision in time because he was made to believe that there was no any other legal remedy available for him to pursue after the dismissal of his application for stay of execution by the Trial Tribunal. The learned advocate argued that, if extension is granted, there are great chances of success to the intended revision. He cited the case of **Rent a Car Vs Peter Kihumu**, Civil Application No.226/01 of 2017 and argued that the applicant has advanced a good cause for the delay and the intended Revision will be predicated upon one of the grounds for revision provided under section 79 of the Civil Procedure Code, [Cap. 33 R.E 2019].

In his reply submission, Mr. Mwenda argued that, the reason advanced by the applicant is not sufficient to move this court to grant extension of time. Citing the decision of the Court of Appeal of Tanzania in Tanzania **Rent a Car vs. Peter Kihumu**, Civil Application No.226/01 of 2017, he submitted that negligence and lack of diligence by the applicant is not a good cause for the grant of extension of time.

Ms. Kimaro, argued that the applicant has not advanced any good ground for extension of time and that allegations of illegality as raised by the applicant's counsel does not exist.

In his rejoinder, the learned counsel for the applicant insisted on existence of illegality in the trial court proceedings. Citing the case of **Robert D. Ishengoma Vs Kahama Mining Corporation Ltd and 2 others**, Civil Application No. 2 of 2013 and **Principal Secretary Ministry of Defence and National Service Vs Devram Valambia [1999] TLR 182**, he argued that illegality can constitute sufficient cause for extension of time.

I have considered submissions by both parties and court record. It is trite law that for the court to exercise its discretion and extend time for the applicant, there must be established sufficient ground(s). I agree with the counsel for the applicant that illegality can constitute a sufficient cause for extension of time. However, illegalities mentioned in the applicant's rejoinder submission does not concern the ruling of the Tribunal in Land Application No. 520 of 2017. The manner the alleged illegalities are structured shows that they concern the proceedings and the decision of the District Land and Housing Tribunal decision in Land Application 482 of 2005 and its subsequent appeal which was registered by this court as Land Appeal No. 28 of 2010. The application at hand concern decision of the District Land and Housing Tribunal in Land Application No. 520 of 2017. Thus, the alleged illegality cannot be considered by this court in this application.

After excluding the alleged illegalities, the reason that remains is the applicant's belief that there was no any other legal remedy to be pursued after the dismissal of his application for stay of execution by the District Land and Housing Tribunal. In his affidavit the applicant stated that he was made to believe that there was no other remedy. He does not mention anybody that has made him to believe so. Moreover, such belief, cannot be considered to be sufficient ground for this court to grant extension of time.

In addition to failure of the applicant to account for his delay with a sufficient cause, the court noted that this application has been overtaken by events because the decree of the court in Land Appeal No. 28/2010 has already been executed. The applicant's counsel informed this court that execution had already been effected while praying to withdraw Misc. Land Application No. 76 of 2019 before my sister Hon. Makani J on 20th November 2019 and the court granted the prayer. The application was for stay of execution of the decree in Land Application No. 482 of 2005 pending determination of the application at hand. In such circumstances, even if extension of time is granted, the intended Revision application will be merely an academic exercise as it well established that once execution has already been effected the court cannot make an order to stay it. In the case of **Juto Ally vs. Lucas Komba and Another**, Civil Application No. 84 of 2017, the Court of Appeal of Tanzania held that

"We are firmly of the view that since execution has been carried out, we cannot make an order an order to stay it ..."

I find the application to be overtaken by events as the order sought in the chamber summons, **extension of time to file Revision out of time of the ruling delivered by Hon. Mbilinyi Chairperson denying stay of**

execution in Misc. Land Application No. 520 of 2017, is overtaken by events as execution sought to be stayed has already been carried out.

For those reasons, this application is hereby dismissed. Given the nature of the dispute and parties involved this application, I do not award costs. Each party should bear its own costs.



Z. D. MANGO
JUDGE
12/02/2021

ORIGINAL