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

MISC. LAND CIVIL APPLICATION NO 435 OF 2020
(Arising from Land Application No.225 of 2011)

MUYA SEKONDO LUGODA (Administrator of the Estate of the Late SEKONDO LUGODA) .....**APPLICANT**

VERSUS

MISOZI MGANGA (Administratix of the Estate of the Late MGANGA LUGODA) .....**RESPONDENT**

Date of Last Order: 27.09.2021
Date of Ruling 18.10.2021

RULING

V.L. MAKANI, J

This application is by MUYA SEKONDO LUGODA. He is applying for extension of time within which to file Revision out of time against the decision of Temeke District Land and Housing Tribunal (**the Tribunal**) in Land Application No. 225 of 2011.

The application is made under section 14(1), (2) of the Law of Limitation Act, 2002, section 68 (e) and 95 of the civil procedure Code, Cap 33, R.E 2002 (**the CPC**).

With leave of the court the application was argued by way of written submissions. The applicant's submissions were drawn gratis by Twarah Yusuph, Advocate, whereas the submissions by the respondent were drawn and filed by Lutufyo Mvumbagu, Advocate.

Submitting for the application Advocate Yusuph prayed to adopt the contents of applicant's affidavit. He said that the applicant was late to file his intended revision as was not aware of the impugned judgment. He said that the applicant was not even aware of the pending case as he was not party to the application No.225 of 2011. That he was not aware that the matter was fixed for judgment on 06/05/2019 and on the same date the judgment was delivered in favour of the respondent. He said that on the date of judgment delivery the respondent was already dead on 14/10/2018. In that circumstances he said, the applicant and administrator could not know the date of judgment. That he only became aware when the notice to vacate the house was affixed to the house.

Further, the counsel said that the impugned decision was tainted with illegalities. That the Execution Application No.225 of 2011 has two different judgments. That the first one was by Hon. Mbilinyi,

Chairman on 26/02/2013 and the second judgment was delivered on 06/05/2019 by Hon. Kirumbi, Chairman. He said the two judgments are active and none of them is set aside. He said that the Chairman did not adhere to the rules as he did not set aside the judgment before continuing with hearing of a matter. He said that the Chairman even granted the orders which were not prayed by the respondent. That the proceedings of Application No.225 of 2011 on the face of record shows misconduct and fraud on the part of the respondent. He relied on the case of **Etiennes Hotel vs. National Housing Corporation, Civil Reference No.32 of 2005 (CAT-DSM) (unreported)** which considered illegality to be a ground of extension of time. he further said the intended application for revision has a probability of success and that if the application is granted the respondent will not suffer. He prayed for the application to be allowed.

In reply, Advocate Lutufyo prayed to adopt the contents of counter affidavit. He said that the court need to ascertain if the reasons advanced by the applicant is true to the effect that he was not aware of the proceedings of the case and the judgment to be challenged. He said that the proceedings of the Land Application No.225 of 2011

shows that on 02/09/2018 the applicant appeared before the Tribunal to notify the Tribunal about the demise of his late father and the Tribunal ordered the applicant to consult with his relatives so as to appoint an Administrator of the deceased for the case to proceed. He said that the order was not complied with by the applicant due to the reasons known to himself despite adjournment of the matter for three consecutive times. He said that taking into account that deceased had already given his evidence and closed his case the Tribunal went on to proceed with other proceedings including but not limited to delivering judgment in favour of the respondent.

The counsel further argued that, even if the applicant got knowledge of the case on 28/04/2020 still he took nearly four months to file this application and without accounting for delay. He insisted that the applicant was negligent and unreasonable. That failing to file revision was due to his own volition and he cannot condone the Court. Mr. Lutufyo relied on the case of **Kig Bar Grocery and Restaurant Ltd vs Garabaki and Another (1972) EA 503.**

On the issue of irregularities that there was a pending judgment which was initially delivered on 26/02/2013, Counsel said there are no two

subsisting judgments arising from one suit. That the judgment alleged to be delivered on 26/02/2013 was set aside on 11/06/2014 upon application by Halifa Chinawa and Juma Salim. That there is no irregularity as alleged by the applicant. He prayed for the application to be dismissed with costs.

In rejoinder Mr. Yusuph reiterated his main submission and added that the applicant was not attending Land Application No.225 of 2011 and that on 02/09/2018 the applicant herein appeared before the Tribunal to notify the Tribunal about the demise of his late father while his late father passed away on 14/10/2018 (**annexure ML-2**). He insisted that there are two active judgments and none of them was set aside.

I have gone through the affidavit and the submissions by the parties herein. It is a settled principle of the law that an application for extension of time is entirely the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported).

The applicant's reasons for delay in filing revision is that he was not aware of the impugned decision and that he was also not aware of the pending case. He also alleges that the impugned decision was tainted with illegalities and irregularities as there were subsisting two decisions arising from the same matter. The respondent on his side refuted the applicant's claims. He contended that even if the applicant was unaware of the decision, still it took him about 4 months to file this application, a period which the applicant has not accounted for.

I have made a thorough perusal of the record of the Tribunal, and it is very clear that in Land Application No.225 of 2011 the applicant was Misozi Mganga (the respondent herein) versus Sekondo Lugoda (the applicant herein) and two others. In the said application the 2nd and 3rd respondent did not file their Written Statements of Defence and therefore judgment was on 26/02/2013 pronounced ex-parte against them in favour of the applicant (respondent herein). Then Halifa Chinawa and Juma Salim who were the 2nd and 3rd respondents respectively, applied to set aside the ex-parte judgment. On 11/07/2014 the application was granted, and Halifa Chinawa and Juma Salim were accordingly allowed to file their Written Statements

of Defence. Land Application No.225 of 2011 was thus restored whereby the applicant was Misozi Mganga (the respondent herein) against Sekondo Lugoda (the applicant's father herein), Halifa Chinawa and Juma Salum. The decision was delivered on 06/05/2019 in which the 3rd respondent (Juma Salum) was declared to be the lawful owner of the suit property. The copies of the judgment and decree were certified and ready for collection on 03/06/2019

From the above, the issue of illegality in having two decisions on the same matter cannot stand. As clearly shown the former decision delivered on 26/02/2013 was set aside on 11/07/2014. Therefore, there are no two co-existing judgments as claimed by the applicant herein. The only confusion that may appear is that the two applications were handled in the same file No. 225 of 2011.

Further, the applicant in this application appears as an administrator of the estate of his late father one Sekondo Lugoda. He is defending the interest of his late father who was the 1st respondent in the Application No.225 of 2011. He was therefore not party to the said application as he appeared only after the demise of his father. However, there is no evidence on record by the applicant to justify

that he lately became aware of the proceedings and judgment in Land Application No.225 of 2011. In absence of such proof the court cannot rely on mere allegations that the applicant was not aware of what was going on. Therefore, this ground has no merit.

On the other hand, the impugned decision was certified ready for collection on 03/06/2019. The applicant claims that he became aware of the impugned decision when the notice to vacate the suit premises (**Annexure ML-3)** was issued, that is, on 28/04/2020. Perusal of the case file shows that this application was filed on 11/08/2020 (Exchequer Receipt No.24860106). It is almost four months from when the applicant became aware of the decision of the Tribunal. This period has not been accounted for by the applicant. It is trite law that in an application for extension of time the applicant must account for all days of delay. It was so stated in the case of **Bushir Hassan vs. Latifa Lukiko Mashayo, Civil Application No 3 Of 2007** (unreported) the Court of Appeal held:

> *"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".*

The delay in the present matter is of more than 100 days and the same has not been accounted for by the applicant.

In view of the above explanations, I am satisfied that no sufficient reasons have been advanced by the applicant to warrant this court to exercise its discretion to grant extension of time. Subsequently, the application is dismissed with costs for want of merit.

It is so ordered.

V.L. MAKANI
JUDGE
18/10/2021