

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

MISC LAND APPLICATION NO. 566 OF 2020

(Arising from Land Application No. 72 of 2015 of the Temeke Land
and Housing Tribunal at Temeke)

SALEHE MASOUDMAGOMBA APPLICANT

VERSUS

TEMEKE MUNICIPAL COUNCIL 1ST RESPONDENT

HALIMA MASOUD SWALEHE 2ND RESPONDENT

RULING

Date of Last Order: 27/7/2021

Date of Ruling: 18/8/2021

A. MSAFIRI, J

In this application, the applicant, Salehe Masoud Mgombe seeks for an order granting him extension of time to institute an application for revision. The applicant intends to apply to this court to revise the decision of the District Land and Housing Tribunal of Temeke in Land Application No. 72 of 2015.

The application, which has been brought under section 14 (1) and (2) of the Law of Limitation Act, Cap 89 is supported by the applicant's affidavit sworn on 5th October, 2020.

By the leave of the court, the hearing of this application was by way of written submissions whereas the applicant appeared in person, representing himself, while the 1st respondent, was represented by one Fidelia Kyando, Law Officer of the 1st respondent and the 2nd respondent was also representing herself.

Submitting in support of this application, the applicant, prayed to adopt his affidavit as part of his submission. He stated that, through he was not a party to Land application No. 72 of 2015, his right for revision is reserved. He submitted further that, the time is that there were some legal processes which to be completed so that the applicant to acquire legal status to make the application for Revision.

He revealed that the 2nd respondent Halima Masoud Swalehe is his sister and was appointed as administratrix of the estate of their deceased father the late Masoud Swalehe. The 2nd respondent was also the applicant in the Land Application No. 72 of 2015 at Temeke Land and Housing Tribunal, whereas the 1st respondent was the respondent in the said application. In that land dispute at Tribunal, the 2nd respondent has sued the 1st respondent claiming for unfairly and inadequate compensation over the landed properties located at Chang'ombe area, the properties which belonged to the estate of late Masoud Swalehe.

After the proceedings, the Judgement was entered against the applicant, the fact which aggrieved the applicant and beneficiaries of the estate (the now

applicant inclusive). Being aggrieved, the beneficiaries advised Halima (the now 1st respondent) to institute an appeal against the Land Tribunal Judgment, but Halima (1st respondent) was reluctant. As the result, the appeal was delayed, and later, Halima was forced to instate an application for extension of time to file an appeal which was filed before this court as Misc Application No. 647/2019. The applicant contended that, due to the fact that he was not party to Land Case No. 72 of 2015, the only available remedy to him is to apply for Revision of the Judgement if the trial Land Tribunal and that this is necessary to him and his follow beneficiaries because the impugned judgement was decided wrongly.

He submitted further that, the application for Revision is out of time because the Land Tribunal judgement was delivered on 29/7/2019. He averred that the extent of his delay is almost 420 days, and the reasons which caused his delay was that; for about 365 days, he believed that the applicant in Misc Application No. 642 of 2019 could have prosecuted that the matter well, but this did not happen.

That for the remaining days, he was forced to apply for administrator ship so that he could get locus standi in this matter, and the same was granted in 11/05/2020. He stated further that for some days he was waiting for the Court directives in Misc application No. 647 of 2019, whereas finally he was advised to make an application or appropriate remedy. He concluded that the judgement in Land application No. 22 of 2015 contains some material mistakes and errors which has occasioned miscarriage of justice to the

beneficiaries of the late Masoud Swalehe and which need to be corrected. He prayed for this Court to allow this application and grant the sought prayers.

In response, Fidelia Kyando, presenting first respondent objected vehemently to this application and submitted that, the applicant has delayed for more than 430 days, and his reason that for 365 days he delayed waiting for court directives in Misc Application No. 647 of 2019 is not sufficient reason for the applicant's delay. This is so, because the Misc Application No. 647 of 2019 was also for extension of time to file an appeal.

The 1st respondent submitted further that the applicant was second witness (PW2) in Land Application No. 72 of 2015 at Temeke Land Tribunal hence he was aware of the proceedings and Judgment in that matter. Ms Kyando for the 1st respondent argued that, as the Misc Application No. 647/2019 was institution by the name of 2nd respondent, and the 2nd respondent never attended the Court when the matter was brought before the Court, the Court dismissed the said application for non-appearance.

She argued further that, as it was the present applicant who filed the said Misc application who filed the said Misc application No. 647/2019 impersonating as 2nd respondent, the time used to file that application for extension of time to appeal could have been used to file revision within time. So, the applicant has not adduced sufficient reason as required by the law.

On the account of the days whereby the administrator ship so that he could get locus standing to file this matter, Ms Kyando contended that the applicant was granted a letter of administrator on 11/5/2020, but he filed this application on 06/10/2020, whereas he was late for more than 147 days from the date he acquired legal status and form part of administrator, hence the applicant has no sufficient reason for delay.

On the reason by the applicant that he was waiting for the outcome of the Misc. Application No. 647/2019 by this Court, Ms. Kyando argued that, this was not true as the said application was dismissed on 20/10/2020 while the present application was filed on 06/10/2020. That means the present application was filed 14 days before the ruling of Misc application No. 647/2019, so the applicant could not have been waiting for the court directives in Misc Application No. 647/2019 as he alleges because he filed the present application before the outcome of the said application. Ms. Kyando concluded her submission by pointing that the applicant has failed to adduce reasonable grounds for him to be granted an extension of time to file an application for revision. She prayed for this Court to dismiss it with costs.

On the part of the 2nd respondent, she started her submission by addressing the Court that the applicants submissions are misleading. She stated that she and the applicant are among the beneficiaries of the late Masoud Swalehe. That other beneficiaries including herself were satisfied with the decision of the District Land and Housing Tribunal delivered on 29 July, 2019,

except for the applicant and she avers that the applicant had the right to follow legal steps and challenge never did so until in November 2019 when the administratrix (2nd respondent) complained to the 1st Respondent mishandling and non-execution of the Court order.

She argued that, as the applicant was not part to the Court proceedings, revision was his only remedy but he delayed by forging the signature of the 2nd respondent and filed Misc. application No. 647 of 2019 which was trucked out.

She concluded by praying for this court to struck out this application in its entirety. There was no rejoinder from the applicant. In the line of the submissions by both parties, the trust on this court is whether or not, the application by the applicant has merits. In dealing with this issue, my starting point is the provisions of Section 14 (1) (2) of the Law of Limitation Act Cap 89 under which this application has been preferred. It provides thus;

Sub Section (1); *"Notwithstanding the provision of this Act, the Court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than of a decree, an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application".*
(Emphasis mine).

The bolder word in the above quoted provision, connotes the determinant factors in granting the application for extension of time. The issue therefore is as to whether or not the applicant has managed to demonstrate good or sufficient cause to be granted the extension of time as prayed.

In the famous **Case of Lyamuya construction Company Limited Vs. Board of Trustees of Young Woman Cristian Association of Tanzania, Civil Application No. 2 of 2020 (unreported)**, the court laid down some factors which can be used to assist the Court in assessing as to what amount to good or stuffiest cause which were follows;

1. *The applicant must account for all the period of delay;*
2. *The delay should be in ordinate*
3. *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take;*
4. *If the Court deals that there are other reasons, such as the existence of a point of law of sufficient importance, such illegality of the decision sought to be challenged.*

Basing on what has been highlighted hereinabove, this Court is enjoined in this application to consider as to whether it qualified in terms of those factors.

While account for the period of his delay, the applicant submitted that the extent of his delay is almost 420 days. The impugned judgment was delivered on 29/07/2019, and the period of application for Revision is 60

days from the date of judgment. He sated that, the reason for his delay was that for about 365 days, he was waiting for the determination and Court directives in Misc application No. 647/2019.

Unfortunately, the applicant did not show or reveal in his affidavit or written submission the ultimate of the said Misc application No. 647 of 2019. The applicant is claiming to have been delayed waiting for determination and supposedly the outcome of Misc No. 647 of 2019 but failed to show this court how and when the said application was determined and what was the Court's directives.

It was in the 1st and 2nd respondents' submissions when it was revealed that Misc Application No. 647 of 2019 was struck out on 20/10/2020. It was also revealed that the applicant filed the present application was filed 14 days BEFORE Misc Application 647/2019 was struck out. This fact was not challenged by the applicant. Therefore, this court finds that, the claim by the applicant that he was waiting for determination of Application 647/2019 are baseless, hence cannot be the reason for the days.

The applicant also has accounted for his delay that, for the days, he was forced to apply for administrator ship so that, he could be able to have locus standi to file the present application, and that the administrator ship was granted on 11/5/2020. However, as correctly observed by the 1st respondent, although the applicant was granted the administrator ship on

11/5/2020, he filed the present application in 06/10/2020. Hence there are about five months which the applicant did not account for.

From the circumstances of this matter which originates from Land Application No. 72 of 2015, the applicant has been doing forum shopping. He was not a part to the Land Application No. 72 of 2015, there was attempt to file extension of time for appeal which was struck by this Court and then this Court and then this attempt by the applicant to file this application for revision out of time.

As I have analyzed above, the applicant despite not being part of the original case, he have failed to account for all the period of the delay and failed to show that the delay was inordinate. The applicant also has not shown diligence in the prosecution of the action he intends to take.

This is so because the court has found out that the applicant did not reveal all the facts in his submission. The applicant did not reveal to the court that the Misc application No. 647/2019 for the extension of appeal time was struck out or the fact that the present application was filed before the determination of the Misc application No. 647/2019.

For the said reasons, I find that the Applicant failed to meet the factors which was laid down in the case of **Lyamuya Construction** (supra), which I have quoted herein above.

After finding that the applicant has failed to account for his delay, I directed myself on whether there is the issue of illegality.

In his affidavit, the applicant stated that he intends to apply for Revision so that he can challenge the impugned judgement as it contains some material mistakes and errors which has occasioned miscarriage of justice. Whether there is existence of a point of law of sufficient importance such as the illegality of the impugned decision.

In the case of **Mgao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015, Citing the case of **Lyamuya Construction, Mussa**, J.A observed that the illegality of the impugned decision has to be clearly visible on the face of record, and quoted Lyamuya's case (supra) where the Court was of the observation that;

"since every party intending to appeal seeks to challenge a decision either on point of law or facts, it cannot in my view, be said that in VALAMBIA'S case the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raised points of law should, as of right, be granted extension of time if he applies for one.

The court there emphasized that such point of law must be that of sufficient importance and **I would add that must also be apparent on the face of record"**

Such as jurisdiction; not one that would be discovered by a long-drawn argument or process".

Applying the foregoing statement of principle to the application at hand, I am not persuaded that the material mistakes and errors which are said to occasion miscarriage of justice are clearly apparent on the face of impugned judgment in Land application No. 72 of 2015. To that end, I must conclude that the applicant has not demonstrated any good and sufficient cause that would entitle him extension of time.

In the result, this application fails and is, accordingly dismissed with costs.

Dated at Dar es Salaam this 18th day of August 2021.



**A. MSAFIRI,
JUDGE**