

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

**MISC. LAND CASE APPLICATION NO 279 OF 2021**  
(Arising from Ilala District Land and housing Tribunal in Land Application No.102 of 2016)

**DR. PHILIP ALLAN LEMA.....APPLICANT**

**VERSUS**

**PETER TEGEMEA NDATELE.....1<sup>ST</sup> RESPONDENT**  
**ILALA MUNICIPAL COUNCIL.....2<sup>ND</sup> RESPONDENT**  
**TULIPO HELTON MWAKABULI.....3<sup>RD</sup> RESPONDENT**

Date of Last Order: 19.08.2022  
Date of Ruling 26.09.2022

**RULING**

**V.L. MAKANI, J**

This application is by DR. PHILIP ALAN LEMA. He is applying for extension of time within which to file an application for revision against the judgment and decree in the Application No.102 of 2016 of Ilala District Land and Housing Tribunal (the **Tribunal**). The application is made under section 14(1) of the Law of Limitation Act, CAP 89 RE 2019 and is supported by the affidavit of the applicant herein.

With leave of the court the application proceeded by way of written submissions. Mr. Thomas Joseph Massawe, Advocate drew and filed submissions on behalf of the applicant, while Mr. Peter Tegemea Ndatele, Advocate drew and filed submissions in reply on behalf of the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent did not file any submissions as per the court order and so the matter proceeded ex-parte against her. The same was the case with the 3<sup>rd</sup> respondent who did not enter appearance despite being served by way of publication in Mwananchi Newspaper of 26/10/2021.

In support of the application, Mr. Massawe said when Application No.102 of 2016 was filed by the 1<sup>st</sup> respondent at the Tribunal, the 1<sup>st</sup> respondent was aware of the applicant's interest and the developments he made on the suit land. He said the knowledge came after being involved in previous land disputes/applications initiated by the 1<sup>st</sup> respondent starting with Application No.188 of 2013, which ended on Land Appeal No.51 of 2016 but still the 1<sup>st</sup> respondent initiated Application No.102 of 2016 without joining the applicant. Mr. Massawe went on saying that the applicant made efforts to obtain copies of the decision in Application No.102 of 2016 and the same was obtained on 17/06/2020 whereas the applicant filed Revision

No.22 of 2020 on 15/07/2020. Mr. Massawe said it was later discovered that the copies of the decision were wrongly titled Application No.102 of 2017 instead of No.102 of 2016 and the decree was titled No.107 of 2017 instead of 102 of 2016. He said this was the Tribunal's fault which resulted to the 1<sup>st</sup> respondent raising a preliminary objection which was conceded by the applicant. The court thus struck out Revision No.22 of 2020 which was timely filed on 23/04/2021.

Mr. Massawe went on saying that the delay period which the applicant is requesting to be extended is in counting from date of delivery of Judgment by the Tribunal in Application No. 102 of 2016 which was on 27/05/2020 to the date of delivery of the ruling in Revision No.22 of 2020 which is 23/04/2021. That there was lapse of 331 days before the filing of this application on 14/06/2021. That the applicant spent 51 days from the date of ruling in Revision No. 22 of 2020 which was on 23/04/2021 to the filing of this application on 14/06/2021. He said that there was a delay in approval in JSDS system from 04/06/2021 until 11/06/2021 which was Friday, and the current application was lodged on Monday 14/06/2021.

Mr. Massawe also pointed out that there was an issue of illegality as the 1<sup>st</sup> respondent when filing Application No.102 of 2016 was fully aware that applicant had interest of the suit land and therefore he was supposed to be joined. He relied on the case of **Tanzania Revenue Authority vs. Tango Transport Company Limited** and **Tango Transport Company Limited vs. Tanzania Revenue Authority, Consolidated Civil Applications No.4 of 2009 and No. 9 Of 2008**. He prayed for the application to be granted.

In reply, Mr. Ndatele observed that it is the position of the law that this court is empowered to grant an order for extension of time provided that the applicant shows good cause for failure to file the same within the statutory time. In support of this observation Mr. Ndatele cited the cases of **Ngao Godwin Losero vs. Julius Mwaangu, Civil Application No. 10 of 2015 (CAT-Arusha)**(unreported) and **Willy Chami vs. Elizabeth Matiko & Another, Misc. Land Application NO. 245 of 2018 (HC-Land Division)** (unreported). He said that it is almost 337 days from when the Tribunal delivered its judgment in Application No.102 of 2016, that is, on 27/05/2020 to 14/06/2021. He said that the applicant has admitted that he was involved in Land Application No.188 of 2013

which ended up in Land Appeal No.51 of 2016 and the applicant's claim against the 1<sup>st</sup> respondent is barred by the doctrine of res judicata, and that is why the applicant's application to be joined in Application No.102 of 2016 was dismissed for lack of legal justification. He said both the Tribunal and the High Court confirmed in their findings that the suit land belongs to the 3<sup>rd</sup> respondent and not the 1<sup>st</sup> respondent and whoever has a claim has to sue Ilala Municipal Council and Tulipo Helton Mwakabuli whom the latter was allocated the said land by Ilala Municipal Council.

Mr Ndatele observed that basing on what the Tribunal and the High Court decided in Land Application No.188 of 2013 which gave rise to the Land Appeal No.51 of 2016 it is clear that the applicant herein has no interest over the disputed land and that is why he has not challenged the decision of the Tribunal in Land Application No.188 of 2013 nor that of the High Court in Land Appeal No.51 of 2016. He insisted that there is no arguable case in the intended Application for Revision as the applicant is not the lawful owner of the suit land. He said granting of this application will prejudice the respondents especially the 3<sup>rd</sup> respondent whose Certificate of Title is in his name.

Mr. Ndatele further argued that the applicant has not shown sufficient reasons for the delay in filing his application after it was struck out in Revision No.22 of 2020 on 23/05/2021. That there are no reasons by the applicant for the 51 days delay, that is from 23/05/2021 when Application No.22 of 2020 was struck out to 14/06/2021 when the instant application was filed. He said the applicant was careless, and he conceded that he filed application for Revision with defective reference No. 107 of 2017 instead of 102 of 2016. He said his carelessness amounted to inaction and negligence. He relied on the case of **Isack Sebelege vs Tanzania Portland Cement Co. Ltd, Civil Application No.25 of 2022 (CAT-DSM)** (unreported). He said that the applicant was represented by a Senior Advocate in the first Application for Revision but still relied on non-existing judgment and decree. That the applicant has not even stated when the wrong title was rectified by the Tribunal. Mr. Ndatele was of the view that when the Tribunal ruled on the former Revision, already the Tribunal had issued proper judgment and decree which the 1<sup>st</sup> respondent attached to his counter affidavit opposing the applicants first Application for Revision. He insisted that the applicant has not accounted for each day of delay and thus prayed for this application to be dismissed with costs.

In rejoinder, Mr. Massawe reiterated what he stated in the main submissions.

Having gone through the application, affidavit, counter-affiavit and submissions, the main issue for consideration is whether this application has merit.

Indeed, as pointed out by Mr. Ndatele, 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. 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) also see **Ngao Godwin Losero** (supra) and **Willy Chami** (supra).

The main reasons for the delay as advanced by the applicant's Counsel is that the applicant had previously filed on time Land Revision No.22 of 2020 which was struck out on 23/04/2021 for being wrongly titled. He attributed the typing error to the Tribunal. He also

stated illegality as ground upon which extension of time should be granted.

The parties are not disputing the fact that Land Revision No.22 of 2020 by the applicant herein was struck out on 23/04/2021 for being incompetent on the ground of having incorrect reference number. However, this instant application was filed on 14/06/2021 after a lapse of 51 days and this is the delay which is questionable. This period of 51 days has not been accounted by the Counsel for the applicant. There is nothing in the affidavit to show what the applicant was doing during the 51 days after the striking out of Land Revision No. 22 of 2020. Though the affidavit is silent, but in the submissions Mr. Massawe gave reasons that the delay was due to the system of JSDS. This reason was not reflected in the affidavit. Parties are bound by their pleadings and if there is nothing in the pleadings in respect of a fact the court cannot rely on the submissions which are only elaborative of what has been stated in the affidavits. In any case, even if the system was the reason, then there ought to have been an affidavit of Mr. Massawe himself to assert this fact. In the absence that this fact of JSDS has not been stated in the affidavit, then the court cannot rely on it. In such circumstances therefore, it is apparent



that the applicant has not been able to account for each and every single day of the delay. In the case of **Bushiri Hassan vs. Latifa Lukiko Mashayo, Civil Application No 3 Of 2007** (unreported)

the Court of Appeal held that:

*" 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".*

Since the applicant has failed to account for the days of the delay as explained hereinabove, then this application is without merit, and it is hereby dismissed with costs.

It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**26/09/2022**