IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

LAND REVISION CASE No.11 OF 2022

(Arising from the decision of District Land and Housing Tribunal for Ilala in Land Application No. 420/2020)

JOHN THEDY NICODEM .....1st APPLICANT

SUBILLAH RAFAELI NENETWA.....2nd APPLICANT

SALUM HASSAN KARANJE.....3rd APPLICANT

MOHAMED MAULIDI MTONGA.....4th APPLICANT

MARIAM ISSA KAREGA.....5th APPLICANT

VERSUS

MSAFIRI DAVID MLANGWA

(*As an administrator of*

the Estate of the Late ***Mwamvua M. Mashu*****) .....RESPONDENT**

RULING

04/08/2022 & 08/09/2022

Masoud, J

This application was brought under the provision of sections 14 (1) of the Law of Limitation Act, Cap 89 R.E 2019 and section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 R.E 2019. It combined two applications. One for extension of time within which to apply for revision, and the other is for revision.

The application is generally supported by a joint affidavit of the applicants dated 11/04/2022. On the other hand, the respondent filed counter affidavit dated 23/05/2022 opposing the application. The applicants were essentially requesting the court to extend time within which they would be able to apply for revision of the decision of the District Land and Housing Tribunal for Ilala (the district tribunal) in Application No. 420/2020. They were also requesting the court to call for, inspect on the propriety, legality and correctness of the proceedings and the consequent decision of the district tribunal of 10/07/2020 in the Application No.420 of 2020. In her counter affidavit, the respondent objected the granting of the sought reliefs.

Hearing of the Application proceeded by way filing written submissions. Both sides were represented. While the applicants were represented by Mr. Samson Mbamba, Advocate; the respondent was represented by Mr. Osward L. Mpangala, Advocate. Both sides duly complied with the schedule for filing the written submissions which at the end of the day informed my ruling. I must however say that the applicants had to be given leave to file their rejoinder outside the previous order that set out the filing schedule because they were not served timely.

Given the combination of the applications shown herein above, I drew inspiration and guidance from a number of cases which dealt with similar issue. They included **Tanzania Knitwear Ltd vs Shamshu Esmail** [1989] TLR 48**, MIC Tanzania Limited vs Minister for Labor and Youth Development,** Civil Appeal No.103 of 2004 (unreported), **Ruvu Gemstone Mining Co. Limited vs Reliance Insurance Company (T) Ltd,** Misc. Commercial Cause No. 21 of 2016 (unreported). The principle emerging from the cited authorities is that the combination of two applications as a single application is, for the avoidance of multiplicity of proceedings which the court abhors, not bad in law.

Consequently, I am going to determine the application for extension of time first, and if need be, I will then discuss the application for revision.

I have gone through the records of this application and the parties' submissions for and against the grant of this application. I appreciated the parties' rival submissions regarding the application which I have very well taken aboard in constructing the ruling.

In my finding, the impugned judgment was delivered on the 10/07/2020, while the copy of the judgment was certified and hence ready for collection on the 03/08/2020. The application at hand was filed on the 11/04/2022 after a lapse of one year and 8 months (about 20 months). The reason attributed to the delay for such a long time was that the applicants were not parties to the matter in relation to which the judgment by the district tribunal. They were therefore unaware of what was transpiring before the trial tribunal.

In line with the above reason, the applicants under paragraph 11 of their joint affidavit averred that they became aware of the existence of the trial tribunal's decision on 17/03/2022. Having so became aware of the said decision, they filed the instant application on 11/4/2022 after a lapse of 25 days. Apparently, the lapse of 25 days was not accounted for at all.

If I may add on the averment of the applicants about not being aware of the decision, it is crucial to note that the circumstances of not being aware and the circumstances in which they became aware of the said decision were not revealed and not plausibly explained in the joint affidavit and submission in chief. Consequently, the court

was denied materials that would have enabled it to determine whether in the circumstances the applicants could rightly be said not to have been aware of the case before the trial tribunal or ought to have known of the existence of the decision.

There was yet another reason adduced for the court to grant extension of time. This is none other than that the decision sought to be revised is tainted with illegalities. With this claim of illegalities, it was contended that the decision of the trial Tribunal does not contain the opinion of the assessors.

Going through the records, it is clear that the trial tribunal ordered that the assessors would give their opinion on 1/7/2020 before the tribunal proceed with the delivery of its judgment. It is on the record that on the said date the trial tribunal's judgment was yet to be completed. Therefore, the matter was adjourned. However, the record reveals loud and clear that the assessors' opinions were given in the presence of the applicant, although the Respondent was absent without notice.

In the circumstances, the cases of **Edna Adam Kibona vs. Absolem Swebe (Sheli),** Civil Appeal No.286 of 2017 (unreported), and **Hamisa S. Mohsin and 2 Others vs Taningra Contractors,** Civil Appeal No.51 of 2013 (unreported), cited by the applicants are distinguishable to the application at hand as the assessors were required to give their opinion. Undeniably, they did give the said opinion, which is also attached to the records of trial tribunal. The same were read over in the presence of the party on 1/7/2020.

The law is very clear that allegation of illegality of the decision which is sought to be challenged must be on the face of record, and of significance, unlike in the present application, where the alleged illegalities are not apparent of the face of record. I say so because the trial tribunal's proceedings reveal that the assessor's opinions were given.

In relation to foregoing as it pertains to principle on allegation of illegalities as a sufficient reason for extension of time, I am mindful of the case of **Principal Secretary, Ministry of Defense and National Service Vs. Divran P. Valambhia** [1992] T.L.R. 387;

and the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010 (Unreported) .

Thus, by virtue of the guidance obtaining from the settled principles on allegation of illegalities as a sufficient reason for the court to exercise its discretion in favour of extension, which principles emerge from the above case law, I am satisfied that the alleged illegalities in the decision sought to be challenged do not exist. With this finding, it would mean that there is no merit attached to the allegation which would support exercising the discretion of the court in favour of the extension.

In the final results, and based on the findings stated herein above, the application for extension of time has no merit. It is accordingly dismissed with costs. With the outcome, it is academic exercise to consider the application for revision.

It is so ordered.

Dated at Dar es salaam this 8th day of September, 2022.

B.S. Masoud

Judge