

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

MISC. LAND CIVIL APPLICATION NO 46 OF 2022

OMARY ABDALAH.....	1 ST APPLICANT
YASSIN SWALEHE.....	2 ND APPLICANT
MATHEI DAUDI.....	3 RD APPLICANT
SELEMANI SAID BENDERA.....	4 TH APPLICANT
ISSA HASSAN KIRIRI.....	5 TH APPLICANT
YOHANA ELIAS MCHELA.....	6 TH APPLICANT
OMARY SADIKI.....	7 TH APPLICANT
ADMBA JAMES.....	8 TH APPLICANT
KIZZA ABDALLAH.....	9 TH APPLICANT
ALLY SHABANI.....	10 TH APPLICANT
MARTINI SAMWEL.....	11 TH APPLICANT
RAMADHANI ABDALLAH.....	12 TH APPLICANT
FATUMA OMARY.....	13 TH APPLICANT
FAHMED SALUMO.....	14 TH APPLICANT
ALOYCE KALOLO.....	15 TH APPLICANT
DENIS BIGANZI.....	16 TH APPLICANT
SIMON DAUDI.....	17 TH APPLICANT
MUSA ZAKHARIA.....	18 TH APPLICANT
VIOLETH CHUMBUKU.....	19 TH APPLICANT
OMARY ISSA IOIDE.....	20 TH APPLICANT
RICHARD CHIAPO.....	21 ST APPLICANT
HUSSEIN SHARIFU.....	22 ND APPLICANT

VERSUS

CONSOLATHA MICHAEL GABONE.....	1 ST RESPONDENT
CHACHA WALIOBA.....	2 ND RESPONDENT
MWITA BOKE.....	3 RD RESPONDENT
LWOGA MAIKO.....	4 TH RESPONDENT
REMINA AUCTION MART & COMPANY LIMITED.....	5 TH RESPONDENT

RULING

V.L. MAKANI, J

The applicants named above are applying for extension of time within which to file an application for revision out of time against the decision of Ilala District Land and Housing Tribunal (the **Tribunal**) in Land Application No. No.292 of 2016.

The application is made under section 41(2) of the Land Disputes Courts Act, Cap 216 RE 2019 and section 14 of the Law of Limitation Act, Cap 86 2019 (the **Limitation Act**) and is supported by affidavit sworn jointly by the applicants.

The applicants' submissions were drawn by Melchizedek Joachim, Advocate, whereas the submissions in reply on behalf of the 1st respondent were filed by Thobiasta Chang'a, Advocate. The 2nd, 3rd and 4th respondents did not file any reply. The matter proceeded ex-parte against them.

Supporting the application, Mr. Joachim gave a brief background of the matter. He said the applicants were not aware of the matter at

the Tribunal until 05/06/2019 when they were briefed of the existence of the matter by the District Commissioner of Ilala. He said the applicants were given a batch of documents containing the judgment of Land Application No.292 of 2016 and the judgment was against unknown residents who were the 2nd, 3rd and 4th respondents. He said at that time the applicants were living in tents as their houses were already demolished and they started looking for legal assistance but in vain. He said the applicants later managed to get legal assistance from the Legal and Human Right Centre who filed the first application in 19/10/2020 at the Tribunal vide Land Application No.567 of 2020. He said the matter was withdrawn on 8/4/2021 on the ground of wrong forum and another application was filed on 7/5/2021 at the High Court Main Registry vide Application No.214 of 2021 and was also withdrawn on the ground of being time barred. He insisted that the applicants were not parties in Land Application No.292 of 2016. He said that the impugned decision was delivered on 24/2/2017 and demolition was on 9/3/2019 and the applicants formally became aware of the matter in 2020. That from 2020 they have been in court corridors trying to pursue their rights. He said the respondents alleged to affix the notices in the households of the applicants but failed to produce any evidence. Counsel relied on the

case of **Lyamuya Construction Company Limited (supra) vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT)**(unreported)., and prayed for this application to be granted.

In reply, Mr. Chang'a for the 1st respondent also gave a brief account of the facts. He said that there are number of days left unaccounted for by the applicants. He said the applicants have not even proved that they were residents of Yangeyange (the area in dispute. He said the impugned decision was delivered on 24/02/2017 and demolition was carried out on 9/3/2019 so the applicants were aware of what was going on. That the applicants bought their land from the seller who was not the owner. He said the applicants were hiding and did not take any effort to be joined in the application at the Tribunal. He insisted that the applicants have failed to account for days of delay. He said after receiving the drawn order they delayed for 60 days and Counsel for the applicants has failed to account for such delay. He said the filing of Land Application No.567 of 2020 in the wrong forum by the applicants was negligence which cannot be considered as sufficient reason for delay. He said the delay was also inordinate as they failed to account from 7/10/2021 when Land Application No.214

of 2021 was withdrawn to 10/2/2022 when they filed this application. Counsel relied on the case of **Lyamuya Construction Company Limited** (supra) and prayed for this application to be dismissed with costs.

In his rejoinder submission, Mr. Joachim reiterated his main submissions.

Having gone through the submissions by Counsel, the central issue for consideration is whether the application at hand has merit.

It is the position of the law that granting of application for extension of time is purely the discretion of the court and it has to be exercised judiciously. In the case of **Benedict Mumello v Bank of Tanzania, Civil Appeal No 12 of 2012**, the Court of Appeal stated as follows:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

The main reasons advanced by the applicants for delay to file the application for revision is that they were not parties in Land

Application No. 292 of 2016 and they were not aware of the impugned decision. Further, they were looking for legal assistance, and they were busy in court corridors filing numerous applications, some of which they decided to withdraw for being improper. On the part of the respondent, Counsel was of the view that the delay has been too long and inordinate, and that filing improper applications is the applicants' negligence and that the applicants have not been able to account for the delay properly.

There are number of cases that provides guidelines in exercising discretion in grant of extension of time. One of the landmark cases is **Lyamuya Construction Company Limited** (supra) in which the Court was of the view that discretion to extend time is judicial, and so it must be exercised according to the rules of reasons and justice, and not according to private opinion or arbitrarily. Five guidelines were formulated in this case which the applicant should show in an application for extension of time that:

- (a) *The applicant must account for all the period of delay.*
- (b) *The delay should not be inordinate.*

- (c) *The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

Applying the cited cases above to this present case at hand, the applicants have demonstrated that they are aggrieved by the decision of the Tribunal in Land application No.292 of 2016 as they were not part to that case. They said the case came to their knowledge upon receipt of the demolition notice of 9/3/2019 but they waited until 2020 when they filed their first Land Application No.567 of 2020 at the Tribunal. On 08/04/2021 they withdrew their application on account of being filed in the wrong forum. On 07/5/2021 they filed another Application No.214 of 2021 at High Court Dare es Salaam registry. Again, they withdrew it on 7/10/2021 on grounds of time limitation. They waited for four other months and filed the present application on 10/02/2022.

In essence, when the applicants filed the first application that is, Land Application No.567/2020, that meant they had already acquired legal assistance and Counsel decided to withdraw the said application on

8/4/2021, but he waited for about 29 days just to file another Land Application No.214 of 2021. The 29 days are not accounted for. Again, Land Application No.214 of 2021 was withdrawn on 07/10/2021 by the applicant's Counsel for being time barred and the present application was filed on 10/02/2022. This is about four months which has also not been accounted for. In the case of **Bushiri Hassan vs. Latifa Lukio Mashayo Civil Appeal No. 3 of 2007**(unreported) the court had this to say:

"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 has to be taken."

On the other hand, it has not been disputed that the applicants were not parties to Land Application No. 292 of 2016. However, that alone cannot automatically grant them extension of time as they should also account for any delay after they become aware. In terms of the sequence of events the matter came to the knowledge of the applicants on 09/03/2019 during the demolition. However, there was post knowledge delays as stated above, therefore the issue of not being party to the original application cannot alone cure any delay, specifically after awareness of the impugned decision.

Basing on the above, I find that the applicants have failed to show sufficient cause for the delay, as they have failed to account for every single day of delay including the four months prior to the filing of this present application which in my view is inordinate.

In the result, the application is without merit, and it is hereby dismissed with costs.

It is so ordered.




V.L. MAKANI
JUDGE
07/11/2022