

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

MISC. LAND CASE APPLICATION NO. 559 OF 2022
(Arising from Execution No. 89 of 2016)

MWAJABU YUSUFU MNTAMBO.....APPLICANT

VERSUS

RAHEL KAZIMOTO.....RESPONDENT

R U L I N G

Date of Last Order: 10.11.2022

Date of Ruling: 25.11.2022

T. N. MWENEGOHA, J.

The applicant is seeking for an order of extension of time so that she can file a Notice of Appeal against the decision of Hon. Tiganga, the then Deputy Registrar. The same was brought under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019 and accompanied by the affidavit of the applicant's Advocate, Aziza Omary Msangi. Hearing was by way of written submissions. Advocate Samson Edward Mbamba appeared for the applicant while the respondent was represented by Advocate Dora S. Mallaba.

Arguing in favour of the application, Mr. Mbamba insisted that, the reason for applying for extension of time is due to the existence of illegality in the impugned decision given by the Hon. Tiganga vide Execution No.89

of 2016. That, the parties were denied their right to be heard before the decision in the said case was given on 15th June, 2017. Above all, the said case was decided while the knowing that, one of parties has been reported dead. He insisted that, after the said decision was out, the applicant sought an application for Revision before the Court of Appeal of Tanzania, vide Civil Application No. 358 of 2017. After a while the same was withdrawn, by the order of the Court on July 2022, hence this application. The applicant's counsel cited the case of **National Housing Corporation & 3 Others versus Jing Lang Li, Civil Application No. 432 of 2017, Court of Appeal of Tanzania, (unreported)**.

In reply, Advocate Mallaba for the respondent insisted that, there are no illegalities in the impugned decision of Hon. Tiganga. That, the court acted diligently and ordered execution of the Decree only to the applicant here. That, the rest of the orders were not executed for reasons that, they had joint liabilities, to be shared by the other party who is now deceased. It was his argument that the execution did not touch the deceased as claimed by the applicant. Therefore, the issue of illegality do not apply as stated in **William Kasian Nchimbi & 2 Others versus Abas Mfaume Sekapala & 2 Others, Civil Reference No. 2 of 2015, Court of Appel of Tanzania at Dar Es Salaam (unreported)**.

In his brief rejoinder, the applicant's counsel reiterated his submissions in chief.

Having gone through the submissions of both parties, the affidavit and counter affidavit, the issue for determination is whether the application has merit or not. In this case, the reasons given by the applicant for extending the time is the existence of illegality in the decision to which the intended review is sought. The applicant has insisted that, the parties were not afforded an opportunity to argue for and against the execution case before the same was decided. Above all, the case was decided while the court is aware of the death of one of the judgment debtors.

I will start by referring the case of **Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women Christians Association of Tanzania, Civil Appeal No. 2 of 2010, Court of Appeal of Tanzania, (Unreported)**. That, for illegality to constitute a sufficient cause capable of allowing an application for extension of time, the same should be apparent on face of records. I went through the impugned decision of Hon. Tiganga, the then deputy Registrar. At page 3 paragraph 2 of the said decision, it reads as follows;-

"In short the point was raised as an objection for not to hear the application, but while addressing the court on the hearing of his point, Ms. Aziza found herself showing

cause as to why the execution should not proceed. Mr. Lusiu stressed that the execution should proceed'.

Based on this quotation, the arguments by the applicant's counsel that the illegality is based on the infringement of the right to be heard on part of the applicant and the others is misconceived. To be precise, the pointed illegality do not exist on records or not apparent on the face of records. Hence, this reason cannot constitute a good cause for allowing the application at hand.

Further, the allegations that the court went on to hear and determine the execution proceedings against the deceased person are also unfounded. The orders given are clear, touching the applicant only, who was the 1st respondent in Execution No. 84 of 2016. Having so observed, I find the application at hand to be devoid of merits and the same is dismissed with costs.

Ordered accordingly




T. N. MWENEGOHA

JUDGE

25/11/2022