

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 455 OF 2022

(Arising from Land Case Bo. 282 of 2010)

FELIX CHANGWE BRUDER (Administrator of the
Estate of the late Emmanuel Pala Pala Bruder) **1st APPLICANT**
MAMA MFINANGA **2ND APPLICANT**
MWAJUMA NDEGE **3RD APPLICANT**
EMMANUEL MSHANA **4TH APPLICANT**
MR. THOMAS **5TH APPLICANT**

VERSUS

SAMIA SELEND A BIHENDO (Administratrix of
Estate of the late BISWADI SELEND A MSUYA) **1ST RESPONDENT**
SHABANI SELEND A MSUYA (Administrator of
Estate of the late BISWADI SELEND A MSUYA) **2ND RESPONDENT**
LONGI BISWADI MSUYA (Administrator of
Estate of the late BISWADI SELEND A MSUYA) **3RD RESPONDENT**
OMARI BISWADI MSUYA (Administrator of
Estate of the late BISWADI SELEND A MSUYA) **4TH RESPONDENT**
FOSTERS AND COMPANY LIMITED **5TH RESPONDENT**

RULING

Date of last Order: 15.12.2022

Date of Ruling: 20.12.2022

A.Z.MGEYEKWA

In this application, the Court is called upon to grant an extension of time to lodge an application for review against the decision of this Court in Land Case No. 282 of 2010. The application is preferred under the provisions of section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. The affidavit is supported by an affidavit deposed by Sindilo G. Lyimo, the applicant's counsel.

When the matter was called for hearing on 30th November, 2022, the applicant was represented by Mr. Sindilo Lyimo, learned Advocate whereas the respondents were represented by Ms. Gladness Lema, learned Advocate holding brief for Ms. Rita Chihoma, learned counsel. The Court acceded to the appellant's proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

The learned counsel for the applicant submitted that the applicant has filed the instant application for an extension of time to file a review out of time. He stated that they are aware that granting of an extension of time is a discretionary power of the Court upon being satisfied that there were sufficient reasons but such powers should be exercised judiciously depending

in the circumstances of each case. He continued to submit that applicant was the Defendant in Land Case No. 282 of 2000, the Judgment was delivered on 29th August, 2014. He went on to submit that before the delivery of the Judgment the applicant and the late Biswadi Salenda Msuya they did already settle the matter outside the Court. He added that surprisingly the respondent continued with execution while knowing they have settle the matter. The applicant complained that on 19th September, 2019, the applicants filed a letter and deed of settlement before the Deputy Registrar explaining that the applicant and Biswadi Selenda Msuya have settled the matter outside the Court. Mr. Lyimo asserted that the previous counsel for the applicants did not inform the Court that the parties entered into a deed of settlement.

The learned counsel for the applicant also raised a ground of illegality. He submitted that the court has been moved to grant an extension of time when the issue in question is illegality. Supporting his argumentation he cited the case of **The Principal Secretary, Ministry of Defence and National Service v Devram Valambia** (1992) TLR 182. The counsel urged this Court to grant the application to allow the applicant to put the court records clear that the parties settled the matter out of Court. Mr. Lyimo lamented that the applicants will lose their rights simply because their lawyer did not inform the

Court about the deed of settlement and because of that mistake the Judgment was entered against the. Fortifying his submission he cited the cases of **Judith Emmanuel Lusohoka v Pastory Bingura Mleikule & 2 Others**, Misc. Land Case Application No. 74 of 2018, High Court at Tabora and **Attorney General on Consolidated Holding Corporation and Another**, Civil Application No. 73 of 2005.

On the strength of the above submission, the applicant's counsel urged this Court to invoke its discretionary power and grant the applicant's application.

In reply, the learned counsel for the 1st to 4th respondents started to narrate the genesis of this matter which I am not going to produce in this application. Ms. Chihoma contended that after the delivery of the impugned Judgment and Decree, the applicant filed a Notice of Appeal for leave to appeal to the Court of Appeal against the decision of this Court in Land Case No,282 of 2010, and his application was dismissed for being devoid of merit on 3rd August, 2018. The counsel went on to submit that an application for review is another attempt of the applicants to mislead this Court since they had failed to lodge an appeal on time which led the Court of Appeal of Tanzania to strike out the Notice of Appeal six years ago. She valiantly contended that

there is no any ground for review which would merit the grant of extension of time.

Ms. Chihoma continued to argue that the applicant's counsel in his submission for extension of time has relied on the ground of illegality of the decision of this Court that there was a settlement agreement out of court between the applicant and the deceased before the delivery of the Judgment. She claimed that the said the intended illegality is grounded on paragraph 8 of the affidavit, in her view the intended illegality is not sufficient or good cause for the court to exercise its discretionary powers to grant an extension of time. She contended that the applicants are relying on the deed of settlement that was made after the execution of the decree process whereas only Thomas Steven Musula, the 5th applicant was involved. The learned counsel for the respondents added that the applicants have failed to show their alleged deed of settlement. She submitted that the applicant's affidavit contains hearsay evidence which does not show the source of information of the facts deposed therein. She urged this Court to disregard the affidavit for being defective.

Ms. Chihoma continued to argue that in applications for an extension of time, the Court is required to look at whether sufficient reasons have been

advanced to warrant granting the prayer for the extension of time sought. To buttress her contention she cited the cases of **Selina Chibago v Finihas Chicago**, Civil Application No. 182 “A” CAT at Dar es Salaam and **Iddi Nyange v Mama Saidi**, Civil Application No. 132/01 of 2017 (unreported), the Court held that:-

“The applicant must fully explain the reason behind and account for every day of delay”.

It was her submission that the applicant has failed to fully explain and provide sufficient reasons for his delay. She valiantly contended that the applicant is delaying justice to the respondent since the matter is in court for more than nine years and litigation must come to an end.

On the strength of the above submission, she urged this Court to dismiss the application with costs.

Rejoining, Mr. Lyimo reiterated his submission in chief. He stressed that the process of appointment of an administrator of estate starts from the family level. He stated that the delay from May, 2021 when the deceased passed away to the time when they lodged the instant application in court was because the family was processing the letter of administration in the court of law. Ending, he urged this Court to grant the applicant’s application.

Having gone through the submissions from both parties it would appear to me to determine *whether the applicant has established sufficient reason for this court to enlarge time.*

It is trite law that in an application for an extension of time the applicant is required to account for each day of delay In the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019. In the case of **Bushfire Hassan v Latina Lucia Masanya**, Civil Application NO.3 of 2007 (unreported) the Court of Appeal of Tanzania when addressing the issue of delay 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 ..."

This stance was followed in many decisions among them being the case of **Mustafa Mohamed Raze v Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 (unreported).

Encapsulated in the applicant submission and per the applicants' affidavit, it is clear that the decision was delivered on 29th August, 2014 and the applicant lodged this application for an extension of time on 9th August, 2022

a lapse of 8 years. Reading paragraphs 7, 8, and 9 of the applicants' counsel affidavit, the applicants' counsel narrated in length from the date when the application was lodged before this Court in 2010 to the process of settling the matter outside this Court. Mr. Lyimo claimed that they signed the deed of settlement on 22nd October, 2014. In paragraph 10, the applicant's counsel claimed that on 9th September, 2019 they filed a letter and deed of settlement before the Deputy Registrar of the High Court. Counting the days of delay from 29th August, 2014 when the judgment was delivered to 9th September, 2019 when they filed the alleged deed of settlement a lapse of 5 years, the applicants have not accounted for the said delay.

Again on 8th June, 2021, the applicants were served with a notice by the 5th respondent requiring them to vacate the suit land. The applicant did not take any action until 9th August, 2022 when they filed the instant application, a lapse of one year, and the applicants' counsel did not account for the days of delay. As far as the length of the delay is concerned the applicants' application cannot stand because they did not account for each day of delay at all.

Regarding the ground of illegality. It has been held in times without number that where illegality exists and is pleaded as a ground the same as well

constitute a good cause for an extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported) and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** (supra) the Court of Appeal of Tanzania on page 89 held that:-

"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality is established, to take appropriate measures to put the matter and the record straight." [Emphasis added].

I fully subscribe to the submission of the applicant that the ground of illegality is a sufficient cause for an extension of time to rectify the raised anomaly. However, the illegality is alleged not to reside in the impugned decision but rather in a deed of settlement. The applicants' counsel in his affidavit did not specify the ground of illegality. In paragraph 4 of his affidavit, he simply

stated that they were the Defendants in Land Case No. 282 of 2010 which was determined *ex parte* in absence of the applicants because they already settled the matter outside the Court. Likewise, the counsel for the applicants in his written submission submitted in length on the issue of the deed of settlement, trying to convince this Court that the parties have settled their matter. This cannot be termed as illegality because it has nothing to do with the decision of this Court in Land Case No. 282 of 2010.

In addition, the termed illegality as rightly pointed out by Ms. Chihoma, counsel for the respondents, is not proved, there is no any cogent document attached to the applicants' application to prove that the parties have settled the matter outside the Court. Therefore, the ground of illegality cannot stand.

In the upshot, I dismiss the Misc. Land Application No. 455 of 2022 with costs.

Order accordingly.

Dated at Dar es Salaam this date 20th December, 2022.



A.Z. MGEYEKWA

JUDGE

20.12.2022

Ruling delivered on 20th December, 2022 in the presence of Mr. Sandilo Lyimo, counsel for the applicants, and Ms. Rita Chihoma, counsel for the respondents was remotely present.




A.Z.MGEYEKWA

JUDGE

20.12.2022