IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 850 OF 2022

CHACHA MWITA MARICHA.....APPLICANT

VERSUS

HARUNA MTUMWA KONDO.....RESPONDENT

R U L I N G

Date of last Order:02/05/2023
Date of Ruling: 12/05/2023

K. D. MHINA, J.

This is an application for extension of time within which the applicant herein can lodge an application for revision to this Court against the decision of the District Land and Housing Tribunal ("the DLHT") for Temeke in Land Application No. 244 of 2017.

The application has been brought by way of Chamber Summon and preferred under Section 14 (1) of the Law of Limitation Act, Cap 89 R: E 2019 ("the LLA") and Section 95 of the Civil Procedure Code, Cap 33 R:E 2019 ("the CPA"). The chamber summons is supported by the applicant's affidavit, which expounds the grounds for the application. The grounds

raised in the affidavit are; **one**, that there was a technical delay and **two** decision of the Tribunal is tainted with illegalities.

The respondent countered the application by filling the counter affidavit which he dully affirmed.

At the hearing, the applicant was represented by Mr. Jackson Matowo, learned counsel, while the respondent by Mr. Gideon Opande, also a learned counsel.

In support of the first ground Mr. Matowo submitted that applicant was unable to file the application for revision within time because he was in numerous court proceedings seeking to challenge the Tribunal's decision. In this he referred this Court to paragraphs 3,4,5,6,7,8,9, and 10 of the affidavit together with annexed decisions of the Court and Tribunal.

He further submitted that the applicant did not sit idle. To bolster his argument on technical delay he cited the following case; one, **Director General LAPF Pension Fund vs. Pascal Ngalo**, Civil Application. No 76/08 of 2018 (Tanzlii) at page 6, where the Court of Appeal held that;

"The applicant's main explanation for the delay is that time was lost when she was pursuing matters in Court. This I think, constituted what is known as technical delay".

Two, **Amos Manyama & Others vs M/s Bio Sustain (T) Ltd**, Misc. Land Application No. 32 of 2020 (HC-Dodoma) at page 8 where it was held that;

"The law is well settled that; technical delay is among grounds establishing sufficient cause in extending time to file an appeal or an application".

Arguing the second ground of application regarding illegality, Mr. Matowo submitted that, Regulation 11 (c) of the **Land Disputes Courts (The Land and Housing District Tribunal) Regulations 2003** ("the Regulations") provides that;

"On the day the application is fixed for hearing, the Tribunal shall"

(a).....

(b).....

(c) Where the respondent is absent and was duly served with the notice of hearing or was present when the hearing date was fixed and has not far misled the Tribunal with good cause for his absence proceed to hear and determine the matter ex-parte by oral evidence".

To expound his argument Mr. Matowo submitted that while the decision of the Tribunal, bear the title of a "Default Judgment", but the matter was not heard. The Tribunal did not hear the matter ex-parte rather than going straight to hold that the matter was proved and entered the default judgment. From the above, he insisted that the decision of the Tribunal was contrary to the law, therefore it is tainted with an illegality. To substantiate his argument, he cited the case of **Amos Manyama** (Supra) at page 6 where it was held that, illegality is a good ground in extending time.

In response Mr. Opande resisted the application by raising that the submissions by the applicant's counsel were misconception, an afterthought and the abuse of Court process.

On the reason why it was a misconception, he submitted delay was not caused by technical reasons. He further analyzed the affidavit by stating that paragraph 3 of the affidavit referred to the default judgment which the applicant is pursuing to challenge it. Further the decisions referred in paragraph 4, 5, 6 and 7 were not attached to the application, therefore they could not be part of the application. Mr. Opande went on by submitting that, the default judgment in Land Application No 244 of 2017 was delivered on 20 November 2017 and the counsel for the applicant failed to account for

each day of day since 2017 to the date of filling this application which is more than five (5) years. Therefore, the delay was caused by negligence.

On the cited case of **Amosi Manyama (Supra)**, he submitted the case provides for the factors to consider in extension of time. But in this application at paragraph 5 of the affidavit the applicant himself averred that his application at the Tribunal for setting aside default judgment (Application No. 123 of 2019) was dismissed for want of prosecution.

Further, in **Amosi Manyama (Supra)** at page 9, the High Court put it succinctly the issue of technical delay, that the important factor to consider is whether the application was "filed timely".

In relation to the matter at hand he submitted that the application to set aside default judgment was filed in 2019, after two years and later on 27 July 2020 it was dismissed for want of prosecution. Therefore, there is no technical delay in this application, because when the matter is dismissed for want of prosecution it does not amount to a technical delay.

He concluded on the issue of misconception by commenting on the cited case **Paschal Ngalo (Supra)** and submitted that it is distinguishable with the application at hand because the facts are different.

On the issue of afterthought, he submitted briefly that the remedy for the application to set aside the default judgment, which was dismissed for want of prosecution is not to file revision in this court.

Mr. Opande submitting on the last ground regarding the abuse of court process, he stated that all applications mentioned in the affidavit passed through the hands of this court. Because when the application to set aside default judgement was dismissed for want of prosecution by the Tribunal, the applicant started to file numerous applications before this Court. Therefore, he is barred by the previous applications decided by this court.

On the issue of illegality, Mr. Opande submitted that, the illegality which is supposed to be raised must be must be apparent on the face of the record, it should no need a long argument to establish the same. In addition to that in the matter at hand the applicant had already exercise his right when he filed an application to set aside a default judgment. Further, the illegality raised was supposed to be determined in the application to set aside default judgment. Therefore, the applicant cannot skip the application to set aside default judgement and go back to challenge the default judgment.

In conclusion he submitted that the application/affidavit does contain any paragraph to raise the point of illegality, therefore there is no illegality.

In a brief rejoinder, Mr. Matowo submitted on the issue of technical delay that when the applicant found that there was a default judgment, he started to pursue his rights, therefore this is a technical delay. Further, the previous applications and this application at hand are related.

On illegality, he submitted that in this matter the illegality is based on Regulation 11 of the of the **Land Disputes Courts (The Land and Housing District Tribunal) Regulations 2003.** Further, contrary to what the counsel for the respondent submitted the issue of illegality was raised under paragraph 10 of the affidavit.

He concluded by submitting that when illegality is raised the requirement of account for each day of delay is no longer needed.

Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the written submission made by the parties, the issue is

"whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to file an application for revision in court."

In the application at hand, as I alluded to earlier, the applicant's first ground of the application is based on technical delay, that he was pursuing his right vide previous numerous applications. This issue of technical delay is not a new phenomenon in our laws as there are a plethora of authorities.

For instance, in **Bharya Engineering and Construction Ltd vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (Tanzlii), the Court of Appeal put it succinctly that the prosecution of an incompetent appeal, when made in good faith and without negligence, ipso facto constitutes sufficient cause for an extension of time and delay arising from the prosecution of that appeal was not actual, it is a mere technical delay. Before going to the merits or demerits of this ground, a brief background is of "great moment" as it will provide necessary inputs in determining whether or not there is a technical delay.

According to the pleadings and some of the attached annexures, the dispute between the parties found its origin in Application No. 29 of 2016 at

Vijibweni Ward Tribunal, whereat the respondent filed a land matter against the applicant. On 28 November 2016, the Ward Tribunal determined the application to its finality to mark the end of the dispute.

In 2017, again the respondent filed against the applicant, Application No. 244 of 2017 at the District Land and Housing Tribunal for Temeke. On 20 November 2017, the Tribunal entered a Default Judgment against the applicant following his failure to attend before the Tribunal and failure to file the Written Statement of Defence.

Undaunted, the applicant filed Misc. Application No. 529 of 2020 seeking to set aside the Default Judgment. On 24 March 2021 the Tribunal dismissed the application for want of prosecution.

Relentless, the applicant filed Land Review No.329 of 2021 seeking the Tribunal to review the order of dismissal in Misc. Application No. 529 of 2020. His efforts went unrewarded after the Tribunal dismissed that application for review for wants of merits.

Aggrieved, the applicant decided to appeal to this Court vide Land Appeal No. 265 of 2021. The appeal was struck out on 11 October 2022.

In paragraph 9 of the affidavit, after that striking out of the appeal, he stated that the struggle was real. Therefore, he decided to file Misc. Land Application No. 720 of 2022, in this Court seeking an extension of time to file an appeal against the Land Review No.329 of 2021. Again, his efforts proved futile after that application was struck out. In striking out the application, this Court held that;

> *"No appeal lies from an order rejecting an application for review. the right to appeal is thereby blocked by judicial process and hence the resort to revision".*

After the striking out of that application the applicant was again dissatisfied therefore, he decided to take further steps by filing this application.

From that background, I am not persuaded by the applicant's ground basing on technical delay and the main reason is that ground is a misconception as far as this application is concerned. While admittedly that the applicant was struggling to challenge the default judgement in Land Application No. 244 of 2017, but filing this application for extension of time to file revision against that decision is a misconception. This is because the

default judgment was unsuccessful challenged at the Tribunal vide an application to set aside default judgment and an application for review.

Therefore, as rightly submitted by Mr. Opande, the applicant could not skip the decision on the application for setting aside default judgment and go back to challenge the default judgment. Ergo, the presence of the decisions in Misc. Application No. 529 of 2020 seeking to set aside the Default Judgment and Land Review No.329 of 2021 seeking the Tribunal to review the order of dismissal in Misc. Application No. 529 of 2020 cannot be ignored.

From the discussion above, it is therefore the applicant cannot take a refuge on the ground of technical delay while there is a misconception in this matter which he is seeking an extension of time to file a revision. The applicant and his advocate have no one to blame for what happened, they are the ones who brought this misconception.

On the second ground of illegality, in my opinion it should not detain me long. This is because the decision which the applicant alleges that it is tainted with an illegality is the decision of the Tribunal in the default judgment (Land Application No. 244 of 2017).

As alluded to, in the first ground in this application, this second ground also is a misconception. The default judgment was already unsuccessful challenged by way of seeking to set aside default judgment and an application for review at the Tribunal, therefore there are subsequent decisions after the default judgment was passed. Therefore, the applicant cannot go back and seek to challenge the default judgment.

Flowing from above, the circumstances of this application lead me to observe right away that having gone through the pleadings, the background of the matter and submission of the parties the issue of illegality cannot arise because of the misconception found in the applicant's application.

The question is why the applicant did not follow what was decided by this Court in Misc. Land Application No. 720 of 2022. Instead of doing that, he engaged the "reverse gear" and go back beyond the application for review.

From the above reasoning, I hold that this application is misconceived. The applicant is seeking an extension of time to file revision against the wrong decision, the decision which was unsuccessful challenged.

Consequently, since the application is found to be a misconception, therefore not proper before this Court. Therefore, I proceed to struck it out with costs.

It is so ordered.

K.D. MHINA
JUDGE
12/05/2023.