

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 580 OF 2021**

*(Arising from Land Case No. 05 of 2010)*

**YAHAYA ATHUMANI ..... 1<sup>ST</sup> APPLICANT**

**RASHID ALLY ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**HELLENA ADAM ELISHA ..... 1<sup>ST</sup> RESPONDENT**

**HELLEN SILAS MASUI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order 29.03.2022*

*Date of Ruling 31.03.2022*

**A.Z.MGEYEKWA, J**

The Court's discretion is sought to grant an extension of time to lodge a review against the decision of this court in Land Case No. 05 of 2010. The application, preferred under the provisions of section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. The application is supported

by the applicants' joint affidavit in which grounds for extension of time are set out.

Ordinarily, the impugned decision was adjudicated by this court on 19<sup>th</sup> December, 2016 whereas, the decision was in favour of the respondent. Dissatisfied, the applicants have decided to file a review after 6 years.

When the matter was called for hearing on 21<sup>st</sup> March, 2022 the applicants appeared in person. There is no dispute that the respondent, by way of publication in Kiswahili tabloid – Mwananchi Newspaper dated 15<sup>th</sup> March, 2022 was served. I am alive to the fact that the respondent was notified through the said publication to appear on 21<sup>st</sup> March, 2022 when this application was fixed for hearing, and the respondent was so informed through the said publication. Having regard to the entire circumstances of this case, I am of the considered view that the respondent was duly being served, therefore, I grant the appellants' prayer to proceed *ex parte* against the respondent.

The applicants began by tracing the genesis of the case which I am not going to reproduce in this application.

Getting to the ground, the applicants in their written submission complained that the impugned decision in Land Case No. 5 of 2010 is tainted with irregularities, errors, and mistakes. They submitted that there is a need to rectify and correct the errors. They insisted that the said decision is illegal and misleading since the same contains different parties of the case unknown to the applicants.

They went on to submit that this court has the power to review its decision on its own motion or the application made by any party. To buttress their submission they referred this court to sections 96, 97, and 78 (1) and Order XLII (I) of the Civil Procedure Code Cap. 33 [R.E 2019]. They went on to submit that on 21<sup>st</sup> October, 2021, they received a copy of the judgment with wrong and defective names, and then they discovered that the error was not rectified or corrected. They went on to submit that immediately they filed the instant application on 25<sup>th</sup> October, 2021.

Stressing on the point of illegality, the applicants submitted that the judgment and decree of this court is tainted with illegality or irregularities since the parties were different contrary to the pleadings and proceedings. It was their considered view that the same requires the intervention of

this court. The applicant went on to submit that the court held many times that where there is an allegation of illegality, the court will extend the time and give an opportunity to look into the matter. To fortify their submission they cited the cases of **The Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185, **Prime 11 Co. Ltd and another v Kamaka Co. Ltd**, Misc. Civil Application No. 683 of 2019 and **NHC v Etienes Hotel**, Civil Application No.10 of 2005. They sadly submitted that they cannot be blamed for mistakes and errors committed by the court in its proceedings and judgment while the court can correct the stated under section 96 of the Civil Procedure Code Cap. 33 PR.E 2019]. Insisting, they submitted that they have adduced sufficient grounds to move this court to grant their application.

On the strength of the above submission, the applicants beckoned upon this court to grant their application.

Having considered the submission by the applicants, the issue for our determination is whether the applicants have adduced sufficient reasons for extension of time to file an application for review before this court. I am mindful of the legal principles governing the application for extension

of time enshrined under section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. The Court will exercise its discretion in favour of applicants only upon showing sufficient cause for the delay. The term 'good cause'. The said principles have been interpreted by the Court of Appeal in its previous decisions including. **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicants' affidavit. In their submission, the applicants relied solely on the ground of illegality. They alleged at the decision of this court is tainted with illegality and irregularities.

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 at 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 be established, to take appropriate measures to put the matter and the record straight.**" [Emphasis added].*

Similarly, in the case of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016 (unreported), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in **Vaiambia's case**, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of*

*law should, as of right, be granted extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance** and, I would add that **it must also be apparent on the face of the record, such as the question of jurisdiction;** not one that would be discovered by a long drawn argument or process."* [Emphasis added].

The illegality is alleged to reside in the powers exercised by this court in writing its judgment whereas the applicants complain that the judgment and decree contain different names of parties. All that they want is to allow them to file an application for review to move this court to correct the names of the parties.

In my view, the raised illegality bears sufficient importance, it meets the requisite threshold for consideration as the basis for enlargement of time, and this alone is weighty enough to constitute sufficient cause for an extension of time. I have considered the fact that the alleged errors were not caused by the applicants.

In sum, based on the foregoing analysis I am satisfied that the above-ground of illegality is evident that the present application has merit.

Therefore, I proceed to grant the applicant's application to lodge an application for review before this court within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 31<sup>st</sup> March, 2022.



A.Z.MGEYEKWA

**JUDGE**

31.03.2022

Ruling delivered on 31<sup>st</sup> March, 2022, in the presence of the applicants



A.Z.MGEYEKWA

**JUDGE**

31.03.2022