IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO. 612 OF 2021

(Arising from the District Land and Housing Tribunal for Kinondoni in Land Application No.369 of 2015 before Hon.Bigambo, Chairman dated 26th October, 2018)

TUMBO GEORGE KIMERY ..... APPLICANT

VERSUS

MOSES MALAKI SEWANDO ..... 1ST RESPONDENT
EDITH ADOLPH ..... 2ND RESPONDENT
JEN MICHAEL KABOGE ..... 3RD RESPONDENT
MUSA MWINYI ..... 4TH RESPONDENT
SHOMARI RAMADHANI ..... 5TH RESPONDENT

RULING

Date of last Order 25.04.2022

Date of Ruling 27.04.2022

A.Z.MGEYEKWA, J

The application before this court is for an extension of time to file a revision out of time against the decision of the District Land and Housing Tribunal for Kinondoni in Land Application No.369 of 2015 before Hon.

Bigambo, Chairman. The application was preferred under the provisions of section 14 (1) of the Law of Limitation Courts Act, Cap.89 [R.E. 2019]. The application is supported by an affidavit deponed by Tumbo George Kimery, the applicant. The grounds advanced as the basis for this application was that the applicant was not aware of the decision of the tribunal and that there is an issue of illegality involved in the impugned decision. The 1st respondent has stoutly opposed the application. Through his counter-affidavit deponed by the respondent. He has opposed the application for the failure of the applicant to state good reasons for his delay.

When the matter was called for hearing on 8th April, 2022 the applicant enjoyed the legal service of Mr. Kasaizi, learned counsel, while the 1st respondent enlisted the service of Ms. Flora holding brief for Mr. Makubi Kunju, learned counsel. The applicant exhausted all means of service to the 2nd and 3rd respondents. On 4th December, 2021 the applicant summoned the 2nd and 3rd respondents through substitution of service, and the matter was set for hearing on 8th April, 2022. However, the 2nd and 3rd respondents did not show appearance. Therefore this court proceeded to determine the application *exparte* against the 2nd and 3rd respondents.

By the court order, the applicant and the 1st respondent argued the application by way of written submission whereas the applicant filed his written submission in chief on 11th April, 2022, and the 1st respondent filed his reply on 20th April, 2022. The applicant waived his right to file a rejoinder.

Mr. Kasaizi in his written submission urged this court to adopt the contents of the applicant's affidavit to form part of his submission. He began to narrate a long background of the application which I am not going to reproduce in this application.

The learned counsel for the applicant submitted that on 28th October, 2021, the applicant became aware that there was a court order to demolish his house and he was forced to vacate the dispute landed premises. The learned counsel for the applicant went on to submit that immediately the applicant filed the instant application electronically and the same was admitted in court on 2nd November, 2021. He added that the applicant did not sleep with his rights after being aware that his house is going to be demolished.

The learned counsel for the applicant also raised a ground of illegality, he claimed that the said judgment was illegally procured by denying the applicant's constitutional right to be heard and the right to own property.

Insisting, Mr. Kasaizi argued that the applicant was intentionally and illegally denied his right to be heard by the respondents since they are aware that the applicant was living in the suit landed property but he was not joined as a party to the suit. He went on to submit that the applicant was not aware of the existing impugned decision hence the District Land and Housing Tribunal illegally conducted the proceedings in his absence. Strenuously, Mr. Kasaizi argued that the illegal decision was obtained by fraud and therefore the same cannot be left intact in the court records.

Mr. Kasaizi went on to submit that the delay was not caused by the applicant's negligence or deliberations as the applicant could not afford to file an application for revision since he was not aware that there is a matter in court and the same was pronounced. He added that for the interest of justice the application be granted to rescue more loss on the side of the applicant. To buttress his contention he cited the case of **Kumbwandumi Ndemfoo Ndossi v Mtei Bus Service Ltd**, Civil Application No. 27/02 of 2016, Court of Appeal of Tanzania. Mr. Kasaizi submitted that the court has several times ruled out that the issue of illegality is in the proceedings, judgment, and decree goes to the merit of the case hence it is a good and sufficient reason for an extension of time. To support his submission he referred this court to the cases of **Theresia Mahoza Mganga v The Administrator General (RITA)**, Civil Application No.5 of 2016, Court of

Appeal of Tanzania (unreported), **Shelina Midas Jahanger & 4 others v Nyakutonya NPF Co. Ltd**, Civil Application No. 186 of 2015, **Ally Ahmad Bauda v Raza Hussein Laidha Damji & 2 Others**, Civil Appeal No. 215 of 2016, **Dismas S/O Bunyerere v The Republic**, Criminal Application No. 42 of 2017 and **TANESCO & 2 Others v Salim Kaboka**, Civil Application No. 68 of 2015. The learned counsel for the applicant continued to submit that the only remedy for the applicant who was not a party to the land application is to apply for revision. He added as since the applicant is out of time thus; he is applying for an extension of time to file the revision out of time.

On the strength of his submission and authorities cited, Mr. Kasaizi beckoned upon this court to grant the applicant's application for an extension of time to file the revision out of time.

Responding, Mr. Makubi in his submission was brief and focused. He stated that having adopted the counter affidavit deponed by the respondent and lodged expressed much resistance. He submitted that section 14 (1) of the Law of Limitation Act, Cap. 89 under which the applicant has brought the instant application demands the applicant to adduce sufficient cause for his application to be granted. He added that it is a well-established principle applicable in all applications for extension of time that whenever there is a delay, an applicant must account for each

day of delay. It was his submission that the applicant has not adduced any sufficient cause as required and he has not accounted for the days of delay.

The learned counsel for the applicant further contended that the law has not mentioned what factors amount to be sufficient cause but the circumstances of each case establish sufficient cause. He added that in the instant application, the circumstances, the reasons brought by the applicant cannot amount to be sufficient cause. To buttress his submission he cited the case of **Blue Line Enterprises Ltd v East Africa Development Bank, (EADB)**, *Civil Application No. 21 of 2012.*

Mr. Makubi valiantly went on to submit that the applicant is not the lawful owner of the suit landed property. He argued that the decision of the District Land and Housing Tribunal which the applicant wants to challenge has never been reversed. He strongly argued that it is irritating to see the counsel for the applicant calling the said decision as an illegal decision while the truth is that the applicant is amongst several trespassers who invaded the 1st respondent's land and they have instituted several cases as a way to weaken the 1st respondent's efforts over the lawful land. Mr. Makubi strenuously submitted that the applicant has been in court for a long time for a legal battle against the 1st

respondent and this is not the first time for the applicant to come to a court of law on the matter at hand. He feverishly submitted that it is not true that the applicant was not aware of the dispute and the decision of the tribunal with respect to Application No. 369 of 2015. He added that after the said decision, the applicant and his fellows lodged a fresh suit case in the same tribunal as a way to stop the respondent from executing the decree, Application No. 132 of 2020. He added that the applicant become aware that there was an application for execution and he appeared in court twice.

On the issue of accounting for days of delay, Mr. Makubi argued that the applicant became aware of the decision in 2020 when he filed Application No. 132 of 2020 which was struck out for the reason that it was *res judicata*. Thus in his view, the applicant has not accounted for each day of delay from the year 2020 to October, 2021. He submitted that the length of the delay is inordinate but there is no good reason which has been given to justify his delay. To fortify his submission he cited the famous case of **Lyamuya Construction Company Ltd** (supra).

Regarding the ground of illegality, he submitted that the judgment of the District Land and Housing Tribunal is not illegal as alleged and there is no court of law that declared it illegal. He spiritedly contended that the learned counsel for the applicant has not pointed out the said illegality.

Stressing on the point of illegality, Mr. Makubi submitted that, it is the principle of law that, alleged illegality must be clear on the face of the record, it is not enough for one to just state the so-called illegality and expect the court to grant the application. He added that the circumstances of the matter show that there was a serious lack of diligence on the part of the applicant and his Advocate. He added that the position of law is that lack of diligence is not a sufficient cause for an extension of time. The learned counsel insisted that the applicant has nothing to suffer because he is a trespasser while the 1st respondent is a lawful owner and other trespassers have been objecting to the process of execution by instituting various suits/ applications which are used to delay the execution.

Mr. Makubi did not end there, he referred this court to the case of **Mbogo v Shah** (1968) EA which held that:-

> *" All relevant factors must be taken into account in deciding how to exercise the discretion to extend time, these factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal, and the degree of prejudice."*

It was his submission that looking at the instant application with reference to the above decision, it is obvious that the applicant's

unexplained delay of more than a year is inordinate, and the allegations of illegality are unfounded and lacks merits.

On the strength of the above submission, the learned counsel for the respondent beckoned upon this court to dismiss the applicant's application for failure to account for each and every day of delay.

In his rejoinder, the applicant reiterated his submission in chief. Insisted that the Court of Appeal in its decisions regarded a ground of illegality on the face of the record as a sufficient cause for extension of time.

From these rival submissions of both learned counsels, the question for this Court's determination is *whether sufficient cause has been adduced to warrant the exercise of discretion of this Court to grant extension of time.*

To begin with, I wish to restate that granting or refusing to grant an application like the one at hand is entirely at the discretion of the Court. However, that discretion is judicial and so it must be exercised according to the rules of reason and justice. There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v Amos David Kassanda & 2 others**, Civil Application No.48/17/2018 and the case of

Benedict Mumelo v Bank of Tanzania [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

> *"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."*

In order to establish that the delay was with sufficient cause, the applicant must not only demonstrate reasons for the delay but also satisfactorily declare and explain the whole period of delay to the Court. In other words, the applicant must account for each day of delay, consistent with the position of the Court of Appeal in the cases of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) which was delivered in May, 2019 and the case of **Bushiri Hassan v Latifa Lukio Mashayo,** Civil Application No. 3 of 2007 (unreported), it held that:-

> *"Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."*

Mr. Kasaizi has raised two main limbs for his delay, accounting for days of delay, and illegality. Regarding the first limb of the objection, I

have scrutinized the applicant's affidavit and the submission made by Mr. Kasaizi to find whether the applicant has accounted for each day of delay and noted that in the applicant's affidavit specifically paragraphs 9 and 14, he has stated that he became aware on 28th October, 2021 that there was an illegal judgment at the time when the court broker threatened him that his house will be demolished in the execution of the decree. The said judgment was delivered on 26th October, 2018. Thereafter, the applicant started to search for legal services without stating when exactly he hired the lawyer to run his case.

Reading the remaining paragraphs in the applicant's affidavit specifically paragraph 4 he stated that the 1st respondent on 16th July, 2021 filed an application for execution No. 458 of 2021 and on 15th October, 2021 the court broker was appointed to execute the decree. However, I have noted that the applicant did not attach the said Execution Application to move this court to prove that the execution took place in October, 2021 and that he was alerted by the court broker that his house was going to be demolished.

Again, after going through the written submission of Mr. Makubi, it is clear that after the decision of the District Land and Housing tribunal in

Application No. 369 of 2015 was delivered, the applicant and his fellows lodged a fresh suit at the tribunal in Application No. 132 of 2020 whereas the applicant was part to the suit, he was the 8th applicant. The Application was lodged against Moses Malaki Sewando, the 1st respondent. In my view considered view, the applicant and his counsel did not act with due diligence. They are not telling the truth since the records reveals that the applicant was aware that the matter in court before filing this application on 21st November, 2021. It is my respectful view that the applicant's ground for extension of time based on the ground of accounting days of delay cannot hold water. Therefore, this ground is disregarded.

Regarding the second limb of illegality. The applicant in his affidavit specifically paragraphs 8 and 12 raised an issue of illegality, the appellant's gravamen of the complaint is that his house will be demolished without being afforded the right to be heard. It is worth noting although the issue of illegality is regarded as a sufficient ground in applications for extension of time, however, the same does not mean that any illegality raised by a party intending to lodge a revision constitutes a point of law. In the case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of**

Tanzania, Civil Application No.2 of 2010 (unreported), the Court of Appeal of Tanzania held that:-

> *" 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 Valambhia'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, (but), not one that would be discovered by a long drawn argument or process." [Emphasis added].*

Equally, in the case of **The Commissioner of Transport v The Attorney General of Uganda & Another** [1959] E.A 329, the Court of Appeal held that:-

> *" In other words, the Court refused to extend time because the point of law at issue was not of sufficient importance to justify the extension.* ***The corollary of that is that in some cases a point of law may be of sufficient importance to warrant an extension of time while in others it may not.*** *"[Emphasis added].*

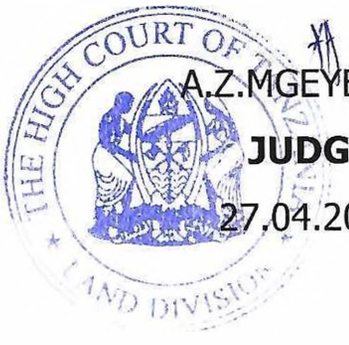
Applying the above authority, in my view, to be ground that the applicant was not heard is a point of law that is of sufficient importance to warrant an extension of time.

After taking into consideration what has been stated in the affidavit and the applicant's Advocate submission I would like to make an observation that in the applicant's affidavit particular paragraphs 8 and 12 the applicant complained that he was condemned unheard since he was not a part to the Application No. 132 of 2020.

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 a revision before this court within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 27th April, 2022.



A.Z.MGEYEKWA

JUDGE

27.04.2022

Ruling delivered on 27th April, 2022 in the presence of Mr. Kasaizi A. Kasaizi, learned counsel for the applicant and Mr. Makubi Kunju, learned counsel for the respondent.

A.Z.MGEYEKWA

JUDGE

27.04.2022