IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 290 OF 2021

(Arising from Application No. 48 of 2010 and Misc. Application No. 238 of 2019 of the District Land and Housing Tribunal for Kinondoni at Mwananyamala)

SELEMANI HAMISI ..... 1ST APPLICANT

ANTHONY MASANJA MANGU ..... 2ND APPLICANT

ANANIA MARKOI LOHAY ..... 3RD APPLICANT

VERSUS

JOHARI MIKIDADI (Adminstratix of the estate of the late

MIKIDADI MOHAMED MIKIDADI).....**1ST RESPONDENT**

ALLY SABENA BUNGA (Administrator of the estate of the late

SABENA ALLY BUNGA .....**2ND RESPONDENT**

RULING

I. ARUFANI, J

The applicants mentioned hereinabove filed in this court the application at hand seeking for extension of time within which to file in the court an application for revision of Application No. 48 of 2010 filed in the District Land and Housing Tribunal (hereinafter referred as the tribunal) by the first respondent versus Sabena Ally Bunga who is now represented in the present application by Ally Sabena Bunga as his legal representative.

The application is made under section 14 (1) of the Law of Limitation Act, Cap 89, R.E 2019 and is supported by joint affidavit sworn by the applicants. In rebuttal the first respondent opposed the application through the counter affidavit sworn by advocate Ereneus Peter Swai and the second respondent filed in the court a counter affidavit which is not disputing any of the facts deposed by the applicants. While the applicants were represented in the matter by Mr. Nixon Eliya Maganga, learned advocate, the first respondent was represented by Mr. Ereneus Peter Swai, learned advocate and the second respondent was unrepresented. By consent of the counsel for the parties the application was argued by way of written submission.

The counsel for the applicant prayed in his submission that, the joint affidavit of the applicants be adopted as part of his submission and stated that, as deposed at paragraph 8 of the affidavit of the applicants, the applicants were not parties in Application No. 48 of 2010 of the tribunal which was between the first respondent and Sabena Ally Bunga who is no longer alive. He argued that, the stated position of the matter shows the applicants have no right of appeal against the judgment of the tribunal and the only remedy available for them is to file in the court an application for revision of the decision of the tribunal. He supported his argument

with the case of **Moses J. Mwakibete V. The Editor Uhuru, Shirika la Magazeti ya Chama & Another,** [1995] TLR 134.

He went on arguing that, the applicants being necessary parties in the application No. 48 of 2010 they were supposed to be joined in the application because they acquired ownership of the land in dispute prior to the institution of the Application No. 48 of 2010 as demonstrated in paragraphs 2, 3, and 4 of the applicants' joint affidavit. He stated that, the applicants were necessary parties in the application because the cause of action between the first and second respondents accrued from the land in dispute which is in occupation of the applicants. He submitted that, hearing and determination of the application without involving the applicants was procedural irregularity which occasioned miscarriage of justice to the applicants as they were condemned unheard and failed to testify how they acquired ownership of the land in dispute.

He referred the court to the cases of **Moh'd Bakari Ramadhan & Another V. Mwanasheria Mkuu was Serikali ya Zanzibar**, Civil Application No. 107/15 of 2019, CAT at Zanzibar (unreported), **Mbeya Rukwa Auto parts and Transports Limited V. Jestina George Mwakyoma**, [2003] TLR 25 which was referred with approval in the case of **Danny Shasha V. Samson Nassoro & 11 Others**, Civil Appeal No.

298 of 2020 (unreported) where the right of hearing a party and necessity of joining necessary party in a suit was emphasized.

He argued that, the tribunal erred in law in proceeding with hearing of the Application No. 48 of 2010 while the respondent, Sabena Ally Bunga had demised during continuation of the proceedings. He stated that, the tribunal ought to strike out the name of the deceased and substitute the same with the name of Ally Sabena Bunga as an administrator of the estate of the late Sabena Ally Bunga. He argued that is because the tribunal was not in a position to issue or pass any order against the deceased because by doing so would have caused the tribunal to issue a decree or order of no practical utility of which is a nullity. To support his argument, he referred the court to the case of **Abdullatif Mohamed Hamis V. Mehboob Yusuf Osman & Another**, Revision No. 6 of 2017, CAT at DSM (unreported) where the court discussed in detail the issue of joinder of necessary party in a suit and its effect.

He argued that, the issue of illegality which is on the face of record of the tribunal is as good and enough ground for granting the applicants extension of time to file revision in the court out of time. He stated that, if the said illegality will be left unattended it will accelerate chaos between the first respondent and the applicants and 29 other persons occupying the land in dispute. He supported his argument with the case of **Juto Ally**

V. Lukas Komba & Another, Civil Application No. 484/17 of 2019, CAT at DSM (unreported), **Kashinde Machibya V. Hafidhi Said**, Civil Application No. 48 of 2009 and **Lyamuya Construction Company Ltd V. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha (unreported) where it was held that, illegality of the decision constitutes sufficient reason for extension of time.

He went on arguing that, the applicants became aware of the case in April, 2020 at the execution stage when the tribunal issued two orders which were affixed on the applicants' suit premises. He stated that, after the applicants became aware of the existence of the case, they promptly filed cases at the tribunal against the first respondent and other necessary parties to challenge the decision of the tribunal but the same were withdrawn after the tribunal had become of the opinion that it could have not pronounced judgment twice on the same land in dispute.

It was argued further by the counsel for the applicants that, the applicants filed in this court Miscellaneous Land Application No. 586 of 2020 but it was struck out by the court with leave to refile. After two days the applicants filed the application at hand in this court. He argued that shows filing and prosecution of the applications before the tribunal and this court was without negligence or delay. He submitted that, as the

applicants had never been made parties in the impugned decision, and the same demonstrates illegality, the applicants have shown good reason for asking the court to exercise its discretionary power to enlarge time for the applicants to file their revision in the court out of time. At the end he prayed the application be allowed with costs.

In his reply the counsel for the first respondent stated that, in order for the applicant's application for extension of time to be granted there are some conditions which must be fulfilled and in doing so the court is required to act judiciously. He referred the court to the case of **Lyamuya Construction Company Limited** (supra) where some conditions to be considered in deciding to grant or refuse extension of time were outlined. He stated that, the decision intended to be revised is dated 17 September, 2018 and the notice of eviction and order of demolition were issued on 21st August, 2019 and 3rd April, 2020 which is almost a period of year and six months after delivery of the impugned judgment.

He argued that, the applicants were aware of existence of the matter as the third applicant was ready to negotiate with the first respondent for some payment. He stated that, for the first time, the applicants instituted Application No. 177 of 2020 and Misc. Application No. 364 of 2020 before the tribunal claiming for ownership of the land in dispute and in both applications the applicants were represented by

Advocate Nickson Maganya who is also representing the applicants in the present application.

He stated further that, the third applicant instituted objection proceedings which was Misc. Application No. 388 of 2020 where he was represented by another advocate. He submitted that, the said applications were withdrawn from the tribunal after the applicants and their advocates seeing they were litigating in a wrong forum. The counsel for the first respondent submitted that is a negligence of the applicants' counsel which cannot be a ground for granting extension of time. He stated that negligence is manifested itself after a delay of one year and six months which is not accounted for anywhere by the applicants or their counsel.

He went on arguing that, on 15th October, 2020 the applicants and their advocate filed Misc. Application No. 586 of 2020 in this court but it was struck out from the court on 15th June, 2021 after been found it was incompetent and not that it was withdrawn from the court with leave to refile as deposed in paragraph 14 of the joint affidavit of the applicants. He submitted that, that is a continuation of chain of negligence which cannot warrant extension of time. He submitted that, the application of the applicants should not be granted as the applicants have not been able to account for each day of the delay and there was gross negligence on

the part of the counsel for the applicants for litigating in a wrong forum for such a long time.

He contended that, there is no illegality on the face of record of the tribunal which has been pointed out by the applicants in the meaning of illegality as understood by the law. He stated that, illegality in an impugned decision means one which can be recognized by a normal person who simply knows how to read and write. He stated it does not need long drawn argument or process to observe it. He submitted that, the decision of the tribunal delivered on 17th September, 2018 was legally procured and there is no allegation of corruption or illegality. He stated that, granting of extension of time will amount to further delaying the first respondent from enjoying the fruits of judgment which is not acceptable.

He argued it appears from the submission of the counsel for the applicants that he was arguing the revision and not the application for extension of time. He submitted that, the reasons advanced by advocate for the applicants do not warrant grant of extension of time and he misdirected himself in arguing the application for revision prematurely. He referred the court to the case of **Yusuf Same & Another V. Hadija Yusuph**, Civil Appeal, No. of 2002 (unreported) CAT at DSM (unreported) where it was stated that, generally, advocates negligence cannot be good reason for extension of time. He argued that, although there are some

peculiar circumstances which the stated position of the law can be exempted but such exemption cannot apply in the case at hand. In fine, he prayed the application be dismissed with costs.

In his rejoinder the counsel for the applicants reiterated most of what he argued in his submission in chief. He stated that, the applicants have met all conditions and guidelines laid in the case of **Lyamuya Construction Company Limited** (supra). He stated that, the argument by the counsel for the respondent that the applicants were litigating in a wrong forum is unfounded and frivolous. He said the delay to file their revision in the court within the time prescribed by the law is out of the applicants control because they were not aware of existence of Application No. 48 of 2010 or judgment originated thereat.

He stated that, the argument that the third applicant was ready to negotiate with the first respondent is gimmick and hoax because it lacks legal backing. He stated the case of **Yusuf Same** (supra) is distinguishable from the present case as in the said case the counsel for the respondent was ignorant of time frame for applying for leave to appeal to the Court of Appeal while in the case at hand there is no such an ignorance. He emphasized that, Misc. Application No. 586 of 2021 was struck out with leave to refile. He referred the court to the case of **Principal Secretary Ministry of Defence and National Service V.**

Devram Valambia, [1992] TLR 387 where it was held that, illegality of the decision being challenged is sufficient reason for granting extension of time to enable the court to put the record right.

He argued further that, it is not only the impugned judgment which is tainted with illegality but also the proceedings of the tribunal. He stated that, on 25th November, 2014 one Issa Juma Msoma reported the late Sabena Ally Bunga died on 18th November, 2014 but no action was taken to contain the said situation. He said there is also exhibit D1 which was tendered in the case but it is not revealed anywhere in the proceedings of the tribunal that it was tendered and admitted in the case. He submitted that, the argument that the tribunal's judgment was procured legally was not raised anywhere in the submission of the applicants. Finally, he prayed the application to be allowed with costs.

The court has carefully considered the submissions made to the court by the counsel for the parties and it has gone through the affidavit and counter affidavit filed in court by the parties. The court has found the issue to determine in this application is whether the applicants have been able to satisfy the court they were prevented by reasonable or sufficient cause to lodge in the court the application for revision of the impugned decision of the tribunal they intend to lodge in the court if extension of time will be granted. The court has framed the above issue after seeing

that is what is provided under section 14 (1) of the Law of Limitation Act upon which the application is made. The cited provision of the law states as quoted hereunder: -

> *"Notwithstanding the provisions of this Act,* ***the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application****, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."* [Emphasis added].

The court has found the wording of the above quoted provision of the law shows the power of the court to grant or refuse extension of time is on the discretion of the court. That is because the word used in the quoted provision of the law is the word "may" which when used in a provision of the law to confer function to be performed it connotes discretion and not mandatory for the function to be performed. However, as provided in the above quoted provision of the law the stated discretion is supposed to be exercised only where the applicant has demonstrated reasonable or sufficient cause for granting extension of time sought. The above view of this court is being bolstered by the case of **Meis Industries Limited & Two Others V. Twiga Bankcorp,** Misc.

Commercial Cause No. 243 of 2015, HC Com. Div. at DSM (unreported) where it stated that: -

> *"It must be put clear that this court has discretion to extend time under section 14 of the Law of Limitation Act but such* ***discretion can only be exercised if sufficient reason has been given by an applicant.*** *"* (Emphasis added).

Since the law as stated hereinabove requires an applicant of extension of time to give reasonable or sufficient cause for being granted extension of time is seeking from the court the question to ask here is what constitutes "reasonable or sufficient cause" used in the above cited provision of the law. The court has found the said term is not defined in the Law of Limitation Act or any other law. The reason for not giving definition of what constitutes the term "reasonable or sufficient cause" in the statutes is because that term is required to be interpreted after taking into consideration all circumstances surrounding each particular case. The above view of this court is getting support from the case of **Regional Manager, TANROADS Kagera V. Ruaha Concrete Company Limited,** Civil Application No. 96 of 2007, CAT at DSM (unreported) where the Court of Appeal of Tanzania stated that:-

"What constitute "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which will move the court to exercise its discretion in order to extend the time limited by the rules."

However, there are some factors which have been considered by our courts to be reasonable or sufficient cause to move the court to exercise its discretionary power to grant extension of time for doing anything required to be done under the law. Some of those cases include the cases of **Tanga Cement Company Limited V. Jumanne D. Massangwa & another**, Civil Application No. 6 of 2001 (unreported) and **Lyamuya Construction Company Limited** (supra). For example, the Court of Appeal of Tanzania laid in the case of **Lyamuya Construction Company Limited** (supra) some factors or principles to be considered in granting extension of time to be as follows:-

(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and

(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient

importance; such as the illegality of the decision sought to be challenged."

Having seeing what the applicants were required to show to the court so that they can be granted extension of time they are seeking from the court, the court has found it is now appropriate to see whether the applicants have managed to satisfy the court they were delayed or prevented by reasonable or sufficient cause to lodge the application they want to lodge in the court out of the time prescribed by the law.

The court has found as stated by the counsel for the applicants and as deposed at paragraph 8 of the affidavit of the applicants, the applicants were not parties in the Application No. 48 of 2010 they intend to apply for its decision to be revised whereby the parties were the respondents in the present application. The court has also found the stated deposition was not disputed by the first respondent or his counsel. That being undisputed fact the court has found that, as stated in the case of **Moses J. Mwakibete** (supra) cited in the submission of the counsel for the applicants the forum available for the applicants to challenge the said decision is by way of filing application for revision of the impugned decision in the court.

Coming to the issue of why the applicants delayed to institute their revision in the court within the required time the court has found the

applicants deposed at paragraph 6 of their joint affidavit and it was argued by their counsel that, they became aware of the decision delivered in Application No. 48 of 2010 when the eviction and demolition orders were issued in Miscellaneous Application No. 238 of 2019 and affixed in their houses on 21st August, 2019 and on 3rd April, 2020 respectively. The court has found although the counsel for the first respondent argued the applicants were aware of the impugned decision and the third applicant was ready to negotiate with the first respondent for payment of some money but as rightly argued by the counsel for the applicants in his rejoinder there is nothing material adduced before the court to support the said argument.

The court has found that, although it is deposed at paragraph 6 of the joint affidavit of the applicants that the applicants became aware of the Application No. 48 of 2010 on 21st August, 2019 and on 3rd April, 2020 when the eviction and demolition orders were issued but they have not stated what caused them to fail to take the required step from 21st August, 2019 when they became aware of the existence of Application No. 48 of 2010 and come to institute their applications in the tribunal in 2020.

The court has found that, even if it would be said for the time the applicants were pursuing various applications, they instituted in the tribunal they were in technical delay as stated in the case of **Fortunatus**

Masha V. William Shija & Another, [1997] TLR 154 but they have not accounted for the period from 21st August, 2019 when the eviction order was issued to them until when they filed their Miscellaneous applications Nos. 177 of 2020, 364 of 2020 and 388 of 2020 in the tribunal. As held in the case of **Daudi Haga v. Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal at Tabora, (Unreported) the applicants were required to account for every day of the delay from when they became aware of existence of Application No. 48 of 2010.

The court has also considered the argument raised and argued deeply by the counsel for the first respondent that the counsel for the applicants were negligent in instituting applications of the applicants in a wrong forum and spent long time in prosecuting them but find there is no material evidence adduced by the first respondent to establish the counsel for the applicants were negligent in instituting the said application in the tribunal. The court has found it is true that it has been stated in numerous cases that negligence of an advocate for a party cannot constitute sufficient or reasonable cause for granting extension of time. However, it is the view of this court that, a mere statement that an advocate for a party was negligence without adducing material facts or evidence to establish the advocate was negligence is not sufficient enough to deny a party what is seeking from the court.

The court has considered the submission by the counsel for the first respondent that the counsel for the applicants were negligence as they filed applications of the applicants in a wrong forum but find a mistake done by the advocates for the applicants to file applications of the applicants in a wrong forum is not sufficient reason to establish the advocates were negligent. To the view of this court there must be material evidence to establish the alleged negligence as sometimes it might be a human error which can be done by any other person in any other profession as advocates are also human being who can do mistake.

Even if it will be said the counsel for the applicants were negligence in instituting applications of the applicants in a wrong forum but there is another ground of illegality of the impugned decision raised in the affidavit of the applicants. The court has found it has been held in number of cases that, illegality of an impugned decision is a point of sufficient importance or good cause for granting extension of time. That principle of law was stated in the case of **Principal Secretary, Ministry of Defence and National Service** (supra) where it was 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 right."*

It was also stated by the Court of Appeal of Tanzania in the case of **Attorney General v. Consolidated Holding Corporation and Another,** Civil Application No. 73 of 2015**,** that:

> *"...contentious as to illegality or otherwise of the challenged decision have now been accepted as a good cause for extension of time."*

While being guided by the position of the law stated in the above quoted cases the court has found inclined to agree with the counsel for the first respondent that, in order for illegality to be accepted as a good cause for granting extension of time, the alleged illegality must be apparent on the face of the record and does not require a long drawn argument to recognize the same. That was stated so in the case of **Lyamuya Construction Company Limited** (supra) where it was stated that: -

> *"Since every party intending to appeal seeks to challenge a decision either on point of law or facts, it cannot be said that in Valambia'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].

That being the position of the law the court has found the applicants stated in their joint affidavit and it was also argued by their counsel that, they were condemned unheard as they were not joined in the application as necessary parties. They also deposed further at paragraph 7 of their joint affidavit that, there are some irregularities in the proceedings of the tribunal. They deposed that, although on 24th November, 2014 the tribunal was notified by one Issa Juma Musoma that Sabena Ally Bunga who was respondent in Application No. 48 of 2010 died on 18th November, 2014 but the tribunal continual with determination of the matter without having a legal person to represent the deceased as required by law.

The counsel for the applicants argued further that, there is exhibit D1 which was used in the application while it is not indicated anywhere in the proceedings of the tribunal as to when it was admitted in the case. The court has found the stated illegality and irregularities do not need long drawn argument to recognize them. They are apparent illegality and irregularities which if they will be established the court will be required to rectify them so as to put the record of the tribunal right.

The court has considered the further argument by the counsel for the first respondent that Miscellaneous Application No. 586 of 2020 filed in the court by the applicants was struck out and not withdrawn with leave to refile as deposed by the applicants in paragraph 14 of their joint affidavit and find that, it is true that the said application was struck out from the court and not that it was withdrawn with leave to refile. However, the court has found the said argument cannot affect the present application which was refiled in the court after the previous application being struck out from the court for being incompetent. It is the understanding of this court that, a matter which has been struck out from the court for being incompetent can be refiled in the court subject to limitation of time and other legal requirements.

In the light of the above stated reasons the court has found that the illegality and irregularities alleged are in the impugned decision of the tribunal are sufficient or reasonable cause to move the court to exercise its discretionary power to grant the applicants extension of time they are seeking from this court. In the premises the applicants are hereby granted extension of time to file in the court an application for revision of the decision of the tribunal delivered in Application No. 48 of 2010. The application for revision to be filed in the court within fourteen (14) days from the date of this ruling. It is so ordered.

Dated at Dar es Salaam this 13th day of May, 2022

I. Arufani

JUDGE

13/05/2022

Court:

Ruling delivered today 13th day of May, 2022 in the presence of Mr. Maganga Nixon, advocate for the applicants and in the presence of Ereneus Peter Swai, advocate for the first respondent and in the absence of the second respondent.

THE HIGH COURT OF TANZANIA
LAND DIVISION

I. Arufani

JUDGE

13/05/2022