IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPLICATION NO. 111 OF 2021

(Originating from Application No. 45 of 2016; in the District Land and Housing Tribunal for Kilosa District, at Kilosa)

SUED JAFARI MCHOIMA (An Administrator of the Estate of the Late **JAFARI SELEMANI MCHOIMA)** ..... **APPLICANT**

VERSUS

ASHA ABDALLAH ..... **RESPONDENT**

RULING

18th Jan. & 27th April, 2022

CHABA, J.

This an application for extension of time within which to file an application for revision out of time. At first, Sued Japhari Mchoima, an administrator of the late Jafari Mchoima, successfully sued the respondent, Asha Abdallah before Msowero Ward Tribunal over ownership of un-surveyed land at Mambegwa Village, Kilosa District. Discontented, the respondent appealed to the District Land and Housing Tribunal for Kilosa District, at Kilosa (the DLHT), where the proceedings and decision of the Ward Tribunal were quashed and nullified and the DLHT held that the matter had to be tried *de-novo* before it.

To comply with the decision of the DLHT, the respondent immediately filed a fresh application before the DLHT and the matter was registered as Land Application No. 45 of 2016 between the parties

praying for a declaratory order over ownership of a parcel of land, specific damages to the tune of Tshs. 100,000/=, injunction against the applicant and costs of the case. The DLHT (MNYUKWA, Chairpeson) entered judgment in favour of the respondent and decreed to the effect that she was a rightful owner of the land in dispute, whereas the sought specific damages were not granted as it was not proved, hence no award issued. On the other hand, injunction against the applicant and costs of the suit were issued.

It appears that the applicant was aggrieved by the decision of the trial DLHT and therefore intended to apply for revision, but alas he was out of time. So, he filed this application for extension of time within which to file revision under section 43 (1) (b) of the Land Disputes Courts Act [Cap. 216 R.E. 2019]. The affidavit supporting the application, sworn by the applicant had the substance which is contained in the introduction part and paragraphs 9, 10, 11, 13, 14 - 19. The rest were, partly on the reasons for delay as indicated in paragraph 18, 20 - 24, which shall be referred soon, and some were extraneous devised to look as grounds for revision, as shown in paragraphs 25 - 29.

At the hearing, it was agreed by parties that this application be heard and argued by way of written submissions. The applicant was represented by Mr. Daniel Magabe, learned advocate, whereas the respondent appeared in person, unrepresented.

Submitting in support of this application, Mr. Magabe commenced by explaining the legal principles that establishes the legal basis for granting extension of time. He stated that there must be sufficient reasons for delay and the applicant must account for each day of delay or the whole period of time so delayed. He further submitted that, as

there is no specific definition of sufficient reason(s), but it is the duty of the court to exercise her discretion judiciously basing on the circumstance of the case. He said, among of the determinants are; length of delay, reasons for the delay, chances of success of the intended avenue and degree of prejudice. He cited section 19 (1), (2) and (3) of the Law of Limitation Act [Cap. 89 R. E. 2019] and **Kotak Ltd v. Kooverji (1967) 1 EA 348** on automatic exclusion of the time used for obtaining copies of judgment and decree.

He stated partly as shown in the affidavit that, the judgement was delivered on 04/10/2020 but the copy of judgment was delayed to be supplied up to 14/12/2020 when he secured the same. From 25th December, 2020 to 25th to January, 2021 there was a vacation for advocates, that is why he did not manage to secure legal services in time to take due cause. The applicant then went searching for an advocate up to Morogoro Urban and met one on 25th January, 2021 (name not given) who after noting that the applicant was out of time, promised to make an application for extension of time. He then went back home to arrange for the advocate's fee. When he came back, the advocate's office was closed. So, he decided to travel to Dar es Salaam Region where he met another advocate who accepted retainership, hence this application which was filed on 04/03/2021, almost three months from the day he secured the necessary copies and five months from the date of the impugned decision.

According to him, there is high possibility of success in the intended revision because the order issued by the trial tribunal for the matter to be tried *de-novo* was not adhered. He said, the tribunal erred in law when it admitted Land Application No. 45 of 2016 as a fresh case between the same parties while there was a pending *de-novo* trial

before the Ward Tribunal, hence contradiction which needs to be sorted out.

He further referred this court to the case of **Mexon Sanga v. Total Tanzania Ltd,** Miscellaneous Civil Application No. 30 of 2020, HCT Iringa which gave interpretation of trial *de-novo* to mean hearing the matter afresh on the same pleadings. He stressed that what transpired in this case was totally illegal, which suffices good cause for granting the sought extension of time. He added that, since he won twice in the Ward Tribunal, such a circumstance suggests that he stands on good chances of success. He finally prayed the court not be tied by technicalities in order to dispense justice.

In reply to submission in chief, the respondent began by pointing out the glaring variation of the enabling provisions of the law as Mr. Daniel Magabe submitted in chief. She submits that the learned counsel highlighted that this application was preferred under sections 14 of the Law of Limitation Act [Cap. 89 R. E. 2019] and 95 of the Civil Procedure Code [Cap. 33 R. E. 2019] while in the chamber summons, section 43 (1) (b) of the Land Disputes Courts Act [Cap. 216 R. E. 2019] was cited as an enabling provision. According to her, this court has not been properly moved for one reason that none of the two provisions of the law have the nature of empowering this court to extend time for revision. In that view, the respondent had the opinion that the proper provisions were sections 41 (2) and 43 (2) of the Land Disputes Courts Act (supra).

The respondent went on, without prejudice to the above observation, arguing that the applicant did introduce new facts which were not included in the affidavit supporting the application. Some of

them are to the effect that the applicant went to Morogoro searching for an advocate and afterward went back home where he organised by himself meanwhile looking for the advocates' fee. The respondent submits further that since an affidavit is a substitute of oral evidence, then the applicant ought to have made his submissions with regard to what he said under oath and that there would be no need of affidavits if parties were free to depart therefrom in the course of submissions. She prayed this court to disregard the above fact or point as the same is lacking basis. In addition, the respondent filtered out that the applicant's application is centred on two grounds; one, being unable to find an advocate within time and second, the issues of illegality.

She discredited the contentions advanced by the counsel for the applicant that, the applicant actually received the necessary copies on 14th December, 2020 being the 40th day after its delivery as it was delivered on 4th November, 2020. The same was ready and available for collection on the date of delivery. She submitted that the applicant's failure to secure a certified copy of judgment was due to negligence and lack of interest, the worse thing is, when he collected the relevant documents already 40 days had been elapsed and had another bunch of 20 days within which to file his revision, if he so wished. She countered that the advocates vacation cited as a reason for the applicant's failure to secure legal service in time, is unknown to law as she has gone through relevant laws, regulations and rules and found nothing of the kind. If the assertions were true, the said advocate who was in vacation from December, 2020 to 25th January, 2021 would have proved the facts through an affidavit, or even the applicant's advocate. Otherwise, all assertion is hearsay and proves negligence on part of the applicant in pursuit of the matter.

Upon scrutiny of the affidavit and submission as well, the respondent contends that the applicant took about 37 days to prepare the application after meeting his advocate, and 6 days to file the same in court whereby it makes a total of 43 days. She submitted that all these days are not accounted for. Indeed, the applicant did not discharge his duty to account for each day of delay as the law requires.

As regards to the issue of *trial de-novo*, the respondent highlighted that the order issued by the trial tribunal was very clear to the effect that any part who wished to pursue the matter for filling a fresh suit in the District Land and Housing Tribunal, that was proper channel and procedure as well to comply with as done by the respondent. She challenged the applicant's cause by stating that the applicant ought to appeal against the decision of the trial DLHT or else to file a preliminary objection against the said Application No. 45 of 2016. She stressed that at this stage, the averments advanced by the applicant are postscript. Else, the complaint that there is a pending suit between the parties, possibly that could be a good ground of appeal. In her opinion, revision is not an alternative to the appeal and therefore the intended revision is improper as there is nothing which has blocked by judicial process. She prays this court to dismiss the application.

In re-joinder, the applicant reiterated what he submitted in chief.

After that comprehensive account of the brief background and having considered submissions by both parties, I am determined to go direct to the major issue, that is whether or not this application has merit.

To begin with general view, I have noted the basic principles relevant to this application as both parties have acknowledged. Herein, I

will restate in general and by holistic term, since there is no dispute about them.

One; In order for an applicant to secure an order for extension of time, he (or she) must, among other things exhibit a good and sufficient cause.

Two; What constitutes sufficient cause can be deduced from the circumstances surrounding the particular case and thus subjective.

Three; The court in entertaining applications for extension of time, possesses discretionary powers which must be exercised judiciously. In the cause of exercising her powers judiciously, the court will consider sufficient grounds from the circumstances of the case.

In our case, the respondent strongly submitted that there were lot of defects in this application in form and contents. Again, the applicant was negligent and has not established any sufficient cause and that there was no illegality in the trial tribunal's proceedings. Apart from the glaring weaknesses noted or detected by the respondent herein above, to which I agree, I wish to give my observations whose part will influence my verdict in this ruling. The affidavit supporting the applicant's application, out of 29 paragraphs only 9 paragraphs were at least relevant to the application at hand. In the relevant paragraphs and parties' written submissions, there is no strong submission that would mean accounting for the days delayed. The purported accounting by the applicant in this case was couched in general terms contrary to the legal principle which requires each and every day to be accounted for. There were inconsistences of legal provisions of sections for moving this court in chamber summons from that which were cited during the hearing, correctly as submitted by the respondent.

But with the advent of the overriding principle, as argued by the applicant, we may ignore all these anomalies and go to the substance of the application. Whether there is sufficient cause or otherwise, the applicant cited vacation of advocates, delay to secure the relevant copies of judgment and decree, illegality and chances of success as the main grounds for seeking an extension of time. Looking at these grounds associated with the applicant's delays to file his case, I am of the considered view that, the said vacation of the advocates, travelling to Dar Es Salaam searching for some other advocates, even if it were considered, it would not justify anything on the inordinate delay caused by the applicant and may be his learned advocate. Winning a case before the Ward Tribunal, cannot be treated as chances of success, taking into account that trial DLHT quashed the whole proceedings, decision and orders emanated therefrom and ordered that the matter had to be tried *de-novo.*

I am also aware of the automatic exclusion of the period of time used in securing necessary documents under section 19 (1), (2) and (3) of the Law of Limitation Act [Cap. 89 R.E. 2019], the cited case of **Kotak Ltd v. Kooverji (1967) 1 EA 348** and the recent decisions of the Court of Appeal of Tanzania in **Valerie McGivern v. Salim Farkrudin Bala,** Civil Appeal No. 386 of 2019 and **The Registered Trustees of The Marian Faith Healing Centre @ Wanamaombi v. The Registered Trustees of The Catholic Church Sumbawanga Diocese,** Civil Appeal No. 64 of 2006 CAT, Tanga and Dar Es Salaam Registry respectively, are among the relevant authorities in the circumstance of this case. In my opinion, a fact which seems to irritate this application is that, even after the automatic exclusion, the applicant would still be inordinately delayed and the need to account for each day

of delay was paramount importance. There is a lot to be observed in respect of this application, but in its brevity, the application is bound to suffer dismissal for major two reasons:

One; the grounds established by the applicant were either not fit or very weak to ground revision and thus no chances of success are featured therein. The basis is obvious. As rightly submitted by the respondent, the grounds set forth for the intended revision involve a question whether it was proper for the applicant to file a new case at the DLHT while the order issued by the DLHT expressed that the matter had to be tried *de-novo*. As hinted above, the trial tribunal quashed all the proceedings, the decision thereof and any other orders issued by the Ward Tribunal. In that view, there was no any pending case before the Ward tribunal. That being the case, the DLHT ordered specifically that a party who wished to pursue the matter had to file before it a fresh suit, where the respondent complied with. In my view, I think that no chances of success have been exhibited by the applicant. Even the avenue chosen by the applicant in the circumstance of this case, was (is) erroneous,

Second; Assuming that the purported revision is the proper remedy, but the applicant failed to account for the days so delayed. It is expressly clear from the facts of the case that no diligence was exercised by the applicant. Instead, he made a general account of encounters which did not crystalise to any day of the three months period which elapsed after he collected the relevant documents. Apart from the above, the findings of this court have proved that the provisions of the law under section 19 (1), (2) and (3) of the Law of Limitation Act (supra) cannot, in any way, be applied in the circumstance of this case. As the days for delay was about 90 days

(almost three months) and no sufficient reasons were advanced by the applicant, it is obvious that the provision of the law under section 41 (2) of the Land Disputes Court Act (supra) was violated. In my opinion, these cumulative facts make it evident that he was indolent to pursue his case as the delay was so inordinate and difficult to account as well.

In the results, and to the extent of my findings, I find no merit in this application and I have nothing to exercise my discretionary power to grant the orders sought by the applicant. This application is hereby dismissed with costs. **It is so ordered.**

DATED at **MOROGORO** this 29th day of April, 2022.

M. J. Chaba

Judge

29/04/2022

COURT:

Ruling delivered at my hand and Seal of this Court in Chamber's this 29th day of April, 2022 in the presence of the applicant and respondent, who both appeared in persons.

M. J. Chaba

Judge

29/04/2022

Right of the parties fully explained.

M. J. Chaba

Judge

29/04/2022