IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.537 OF 2021

(Arising from the Ruling of Hon. S. L. Mbega, Chairperson of Kibaha District Land and Housing tribunal, in Misc. Application No. 139 of 2019, dated 29/09/2020)

CHARLES HANS KIRENGA..... APPLICANT

VERSUS

PETA MHOMA (Administrator of the Estate of the late **PROF. JUMANNE D. L. MHONA).....RESPONDENT**

R U L I N G

Date of Last Order: 14. 02.2022
Date of Judgment: 23.03.2022

T. N. MWENEGOHA, J.

Under Section 14(1) of the Limitation Act, Cap 89 R. E. 2019, Charles Hans Kirenga is seeking to extend the time for him to be allowed to file an application for Revision out of time, against the Ruling of District Land and Housing Tribunal for Kibaha, vide Misc. Application No. 139 of 2019. The application was supported by the affidavit of the applicant, Charles Hans Kirenga.

Briefly, it was the contention of the applicant that on the 21st July, 2007, the applicant bought a piece of land, surveyed the same and partitioned it into three Plots, described as Plot No. 66, 67 and 68. All located at Pangani Area, Kibaha District and Pwani region. He enjoyed the occupation of the said land peacefully until when one Prof. Jumanne Mhoma, now deceased, claimed ownership of the land.

That the late Mhoma successfully filed a Land Application No. 21 of 2010 at the District Land and Housing Tribunal for Kibaha. Prior to that, the late Mhona had already filed another case at the Ward Tribunal of Pangani vide Land Dispute No. 14/b/K/P/8. The decision of the Ward Tribunal was delivered on the 25th of February, 2009. It was never challenged and remains binding to the parties todate and formed the basis of the decision rendered in favor of the respondent in the impugned decision of the District Land and Housing Tribunal of Kibaha.

However, the applicant was not made a party to the said dispute. Being dissatisfied by the decision of the District Tribunal in Land Application No. 21 of 2010, he unsuccessfully appealed to the High Court, where the court confirmed the decision of the Ward Tribunal, insisting that, since the same remained unchallenged, it is binding to the parties.

Thereafter, the Administratrix of the estate of the late Prof. Mhoma moved to execute the decision of the Pangani Ward Tribunal at the District Land and Housing Tribunal for Kibaha, through Misc. Application No. 244 of 2017. The execution was later stayed following the applicant's application, vide Misc. Application No. 20 of 2018. Later, the applicant unsuccessfully, filed an application for Review, Misc. No. 136 of 2019 which was decided in favor of the respondent. It is the said decision that he is intending to challenge in this Court by way of Revision.

The application was heard by way of written submissions, Amina Nyahori, Advocate appeared for the applicant, while the respondent was represented in gratis by Professor Alex Makulilo, Advocate.

In her submissions, in favour of the application, Advocate Nyahori contended that the applicant delayed to take intended actions against the respondent as he was prosecuting his case in bonafide believing that he was taking a right direction. That he didn't remain sleeping after the impugned ruling was delivered, rather, he was busy all the time in court by prosecuting another case for the interest of the land, vide Misc. Land Application No. 232 of 2020. That, this is a sufficient reason to allow his application, as the Law of Limitation, Cap 89, R. E. 2019, at Section 21(1), (2) and (3) is clear that, the time spent by a party to prosecute other civil proceedings of like nature, diligently in court should be excluded in computing the time for a particular action. She also cited the case of **Elly Peter Sanya vs. Ester Nelson, Civil Appeal No. 151 of 2018, Court of Appeal of Tanzania, (unreported),** where it was observed that:-

> *"It is now settled principle that, the delay in taking action within the time specified by the law caused by time spent in prosecuting a matter in court constitutes good cause of delay. This is what is known in legal arena as technical delay".*

Advocate for the applicant further advanced reasons on the existence of illegalities apparent on the face of records in the Misc. Land Application No. 136 of 2019 and argued that it is also a sufficient cause for granting the order of extension of time as stated in **The Principal Secretary, Ministry of Defense and National Service vs. D.P. Valambia (1992), TLR 185.**

The Respondent, through her advocate, Professor Makulilo replied to all the issues raised by the applicant. Among the issues he pointed out to this Court is the fact that the applicant has matters pending before other Courts on the same parties and subject matter. In particular he pointed out that the Misc. Land Application No. 232 of 2020 which the applicant declared in the affidavit

to have been prosecuted at the District Tribunal hence delaying him to pursue other causes is actually still pending at the District Land and Housing Tribunal for Kibaha contrary to what has been expressed in the applicant's affidavit.

Professor Makulilo continued to expresses to this Court that the application at hand is devoid of merits. He argued that the application goes against the principles stated in **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.02 of 2010, Court of Appeal, (unreported),** that ;-

> *"As a matter of general principle, it is the discretion of the court to grant extension of time. But that discretion is judicial, and so it must be exercised accordingly to the rules of reason and justice and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated; -*
>
> *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.*
> d) *If the court feels that, there other sufficient reasons as the existence of point of law of sufficient importance; such as illegality of the decision sought to be challenged".*

He maintained that, as far the 1st reason for delay is concerned, the whole arguments by the counsel for the applicant are misconceived and or misplaced. He insisted that, the doctrine of technical delay as argued in the 1st reason for delay cannot apply in the case at hand, as stated in section 21(1), (2) and (3) of the Limitation Act, supra.

He further cited the case of **The Registered Trustees of Redeemed Assemblies of God in Tanzania (TAG) vs. Obed Herizon Sichembe & The Registered Trustees of Tanzania Assemblies of God (TAG), Misc. Land Application No. 82 of 2020, High Court of Tanzania at Mbeya (unreported),** where the court laid down four conditions which must be fulfilled cumulatively by the applicant wishing to rely on the doctrine of technical delay as follows; -

1. **That, prior to the application for extension of time under consideration, the applicant must have timely filed a court matter of matters for some reliefs.**
2. **That, the matter/s previously filed by the applicant must have been struck out for incompetence before the application for extension of time was instituted.**
3. **That, subsequent to striking out of the previous matter, the applicant must have filed in court the application for enlargement of time for instituting a competent matter out of time which will seek the same relief/s as those which were sought in the previous matter that had been struck out.**
4. **That, the applicant must promptly and diligently, filed in court the application for enlargement upon previous matter being struck out.**

The respondent's counsel insisted that, the applicant has not met the above stated conditions. That, the applicant prior to the filing of the instant application did not timely file an application for Revision. Since the first condition does not exist then the rest cannot be applied as all of them should exist cumulatively.

As for the allegations of illegalities in the impugned decision, Professor Makulilo was of the view that, the same does not raise any question of law of sufficient importance. That, the illegalities are not apparent on face of records and can only be discovered by long drawn arguments. Therefore, the case of **The Principal Secretary, Ministry of Defense and National Service** (supra) is distinguishable in the situation at hand.

In her rejoinder, the counsel for the applicant just acknowledged a mistake she made in her submissions and maintained that, the case which the applicant was prosecuting for the interest of the land in dispute, vide Misc. Land Application No. 232 of 2020 is yet to be decided. It is still pending. That, what was stated in her submissions in chief was a mere slip of a pen and the court should not draw any inference on that fact.

I have gone through the submissions of the counsels for the parties in the application. I also went through the affidavit in support of the application as well as the counter affidavit. The question to be answered is whether the instant application has merit.

However, before addressing the merit of the Application, it is prudent that I address an issue that has been pointed out by the respondent and confirmed by the applicant.

In her reply, the respondent through her Advocate informed this Court that the applicant cannot use the Land Application No. 232 of 2020 as an excuse as the same is yet to be decided and is pending at Kibaha District Land and Housing Tribunal. This was confirmed by the applicant in his rejoinder, that Land Application No. 232 of 2020 is still pending.

Upon perusing the affidavit of the applicant, I have noted that, the applicant provided under paragraph 13 and 14 of his affidavit, that he applied for extension of time at District Land and Housing Tribunal for Coast region at Kibaha. Upon the delivery of the ruling of that application (Land Application No. 232 of 2020) he was advise by his Advocate Amina Nyahori that the same was not the recourse to be taken.

However, in his rejoinder, the applicant's counsel admitted that, Misc. Application No. 232 of 2020 is yet to be decide. It is still pending and what is pleaded under paragraph 14 of the affidavit is just a slip of pen.

I wish to emphasize that, parties are bound by their pleadings as per the case of **Yara Tanzania Ltd vs. Charles Aloyce Msemwa & 2 Others.** The pleadings in this case are the affidavits filed by the parties. Moreover, the fact that the affidavit is communicating wrong information, is a defect that touches the competence of the application. The matter in question is yet to be determined, but the affidavit in support of the application shows that the same has been decided.

This means, the person swearing the said affidavit gave us false testimony and thus it suffices to discredit the whole affidavit. Therefore, this court finds the whole affidavit to be defective and consequently affect the Application as the affidavit is the core of this application.

Hence, I find it prudent to strike out this application with costs.

Ordered accordingly.

T. N. MWENEGOHA
JUDGE
23/03/2022

THE HIGH COURT OF TANZANIA
LAND DIVISION