

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 245 OF 2021**

**PHILEMONI ELIESKIA MAVOO.....APPLICANT**

**VERSUS**

**THEODORY KAGENYI.....1<sup>ST</sup> RESPONDENT**

**MAGRETH TAUKA KAGENYI.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order:28/03/2022*

*Date of Ruling:21/04/2022*

**T. N. MWENEGOHA, J.**

The applicant filed this application under section 14(1) of the law of limitation Act, Cap 89 89 R. E. 2019 praying among other orders for extension of time to file Revision against the decision of **DLHT of Ilala in Application No. 132 of 2014** delivered on **12<sup>th</sup> Sept, 2017**.

The application was heard by way of written submission where by the application was represented by Amin Mohamed Mshana, Adv and the Respondents were represented by Steven Ally Mwakibolwa, Adv.

In his submission to support application Mr. Mshana had reasons for this court to grant application one, that wrong filed application No. 353 of 2018

which was dismissed for being wrongly filed which was pending in the Tribunal for 2 years.

Secondly, he was not supplied with the copy of Judgement on time, and upon receipt he was seeking advice until he handed to his counsel who drafted and filed it on 19 April, 2021.

Thirdly, there is illegality the decision based on the deed of the settlement entered without him being evolved while he was a part to the suit.

In reply Mr. Mwakibolwa submitted that the application was advised off record to file revision but he added that the applicant had no sufficient proof to convince this court to extend time.

I have considered submission of both parties, the issue here is whether the application has merits.

As it is have been asserted by both parties that extension of time is pure by discretion of the court, what is to be borne in mind is that this discretion is to be exercised judiciously. In addition to that the direction is upon consideration of sufficient cause being shown before the court.

From the submissions of both counsels there is no dispute on the two years period from the date of decision of appeal where the applicant filed Misc. Application No. 353 of 2018 that was before the Tribunal from 2018 to the year 2021 when it was dismissed and the applicant was advice to file the proper application.

I have noted that the respondent alleged that he advised the applicant off record to file review; these off records allegation have no merit as they have not been proved.

I find that the reason advanced that the applicant had wrongly presented Application no. 353 of 2018 shows that he was busy in the court corridors pursuing his right, he did not sleep over his right.


On the hand, there is the fact that the applicant was part in application No. 132 of 2014 where the 1<sup>st</sup> and 2<sup>nd</sup> Respondent alleged agreed to enter into deed of settlement without involving the applicant herein. The allegation that he had interest to the suit land is material. The fact that he is not included in the deed of settlement is illegality and therefore attracts the attention of this court to analyze the same.

This Court finds that there is illegality, and illegality is one of the reason that the court may extend time, as per the case of **Lyamuya Construction Company Ltd vs. Board of Trustees of Young Womens' Christian Association of Tanzania, Civil Application No. 2 of 2010**

For the above two reasons given above, this court find that the application has merit and the applicant is granted 14 days to file his application. Application granted with costs.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**21/04/2022**