

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

REVISION NO. 55 OF 2021

(Arising from the ruling and order (Drawn order) of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala in Land Application No. 382 of 2016 and Application No. 496 of 2018)

ELIZABETH BALALI APPELLANT

VERSUS

DEODATA ELIAS RESPONDENT

RULING

Date of Last Order: 07/6/2022

Date of Ruling: 22/6/2022

A. MSAFIRI, J

The applicant herein has filed this application seeking for the following orders:-

1. That this Honourable Court may be pleased to examine and revise the drawn order, ruling and proceedings in respect of Misc. Application No. 496 of 2018 between Elizabeth Balali vs Deodata Elias and make an order altering the ruling to the extent shown herein.
2. Costs of this Application be provided for.
3. Any other order as this Honourable court may deem fit. *Alls.*

The application was made under Section 43 (1) (b) and (2) of the Land Disputes Act, Cap 216 R.E 2019.

Hearing of the application was by way of written submissions whereby the applicant was represented by advocate Sauli Santo Makori and the respondent was represented by advocate Stephen Mayombo.

Starting his submission, Mr. Makori advocate for the applicant, prayed to adopt the contents of the said affidavit. He submitted that, paragraphs 2,3,4,5,6,7,8,9,10,11,12,14 and 15 of the affidavit shows clearly that the delay to file an appeal against the order of the District Land and Housing Tribunal for Kinondoni was caused by the facts which was beyond the applicant's control.

Mr. Makori said further that, the basic consideration to take into account in determining this Revision is whether the applicant demonstrates good cause for the Court to grant the orders sought. He argued that it is not disputed that the then advocate for the applicant failed to file the application to set aside the dismissal order on time due to sickness which resulted into the advocate's death on 15th March, 2020 as it is shown under paragraph 8 and 9 and annexure "EB-5" to the affidavit.

He pointed that this Court has discretionary powers to grant an extension of time if sufficient reasons are presented. He prayed that this revision be granted and the applicant be accorded an opportunity to file an application to set aside the dismissal order dated 30th January, 2022 as the Tribunal

Alls-

Chairman proceeded to dismiss the application without observing the ground of sickness.

Mr. Mayombo for the respondent submitted in opposition of the application. He stated that, the applicant has moved this Court to grant the application by section 43 (1) (b) and (2) of the Land Disputes Courts Act. That, from the provisions, the applicant is duty bound to demonstrate how the decision or proceedings of the District Tribunal in Misc. Application No. 496 of 2018 is tainted with an error material to the merits of the case leading to injustice.

He said further that as per paragraphs 14, 15, 16 of the affidavit, the applicant is praying for this Court to grant extension of time to file an application setting aside dismissal order of the District Tribunal on Land Application No. 382 of 2016. In his opinion, this Court has no jurisdiction to grant such prayer of extension of time setting aside dismissal order of the District Tribunal as it is the District Tribunal which has the said powers by virtue of Section 14 (1) & (2) of the Law of Limitation Act; Cap 89 R.E 2019.

He maintained that, since this is an application for revision, the applicant has to demonstrate an error material to the merit of case leading to injustice. To cement his submissions, Mr. Mayombo cited various authorities including the case of Court of Appeal of **Patrick Magologozo Mongella vs. The Board of Trustees of the Public Service Social Security Fund**, Civil Application No. 342/2018 of 2019, CAT, Dar es

Salaam (unreported). He prayed for the dismissal of the application with costs.

There was no rejoinder.

The brief background of this matter as grasped from the contents of the affidavit is that, in 2016, the applicant instituted Land Application No. 382 of 2016 against the respondent. The matter was filed before the District Land and Housing Tribunal of Kinondoni at Mwananyamala. The applicant was claiming among other reliefs, to be declared the lawful owner of the suit premises located at Boko Mivinjeni within Kinondoni Municipality, order that the respondent has trespassed into the applicant's premises, and that the respondent be ordered to pay the applicant, disturbance allowances. However, the application was dismissed on 30/01/2017 for want of prosecution.

Through her advocate, the applicant instituted Misc. Application No. 496 of 2018 before the said District Tribunal seeking for an extension of time to set aside the dismissal order. The application was dismissed on 09/1/2020 by the District Tribunal for the reason that the applicant has failed to disclose a good cause for extension of time.

Aggrieved, the applicant filed before this Court for an extension of time within which to lodge an appeal against the decision of the District Tribunal. The application was granted on 26/8/2021 and the applicant was *Alls.*

ordered to lodge the intended appeal within 30 days from the date of the Court's ruling.

The applicant lodged Land Appeal No. 203 of 2021 challenging the decision of the District Tribunal in Application No. 382 of 2016 and Misc. Application No. 496 of 2018. However, the applicant prayed to withdraw the appeal for the reasons that the same was misconceived and prayed for the leave to file an application for revision. The prayers were granted by this Court hence the present application was filed.

The law requires the High Court to exercise its revisional jurisdiction in a case where it appears that there has been an error material to the merits of the case involving justice. This is provided under Section 43(1) (b) of the Land Disputes Court Act. For easy of reference, I hereunder quote the said provision as follows;

Section 43(1) (b);

"In addition to any other powers in that behalf conferred upon the High Court, the High Court;

*b) may in any proceedings determined in District Land and Housing Tribunal in the exercise of its original, appellate or provisional jurisdiction, on application being made in that behalf by any party or of its own motion, **if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit**". (emphasis mine).*

Atts.

I have been moved by the applicant to examine and revise the drawn order, ruling and proceedings in respect of Misc. Application No. 496 of 2018 between the parties before the District Tribunal. The main issue here is whether there is any error material to the merit of the case i.e. Misc. Application No. 496 of 2018 which involves injustice.

The applicant filed Application No. 496 of 2018 before the District Tribunal seeking leave of the Court for extension of time to apply for orders to set aside a dismissal order dated 30/01/2017 in Land Application No. 382 of 2016. Going through the records of the District Tribunal, it shows that the applicant moved the District Tribunal by filing chamber summons supported by the two affidavits, the applicant's and her advocate Serapius Mdamu.

In her affidavit, the applicant stated that, the reason for delay was that her advocate Mr. Mdamu fell seriously sick and was admitted in different hospitals for eye treatment the hospitals including CCBRT, KCMC and Litembo. That, she got information of her advocate's ill health after several months while she was waiting for the said advocate to communicate to her about the progress of the case after filing it in Court. That, after that she went and made enquiries at the District Tribunal where she found that the case has been dismissed for want of prosecution on 30/01/20217.

That, after that, it took her some months again to find the service of another advocate who advised her to file the application for enlargement of time. She said she believed that, there are triable issues of law and facts to

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be determined by the District Tribunal on the question of ownership of the land in dispute.

In the affidavit of Serapius Mdamu, the advocate stated that, in July, 2016, the applicant instructed him to represent her in Application No. 382 of 2016 which he did. That, immediately after taking over the matter, he suffered acute diabetic complications which led to partial vision disability. That, he got admitted in different hospitals including CCBRT, Dr. Basier, KCMC, Muhimbili and Litembo. He attached copies of some medical reports as annexure "DD" collectively. He said that, on the date the case was dismissed for want of prosecution i.e. on 30/01/2017, he was admitted at KCMC Hospital, Moshi, Kilimanjaro Region.

After hearing of the application which was done by way of written submissions, the trial Chairman in determination of the application, was of the view that the applicant failed to disclose good reasons which could move the Court to grant application. The Chairman was of the opinion that, the reasons advanced by the applicant were not sufficient, because she stated that she started following the case after several months when she missed communication from his advocate. To the Hon. Chairman's opinion, this phrase from the applicant shows that she was too negligent to follow up on her case.

The Hon. Chairman also found that, the dates mentioned in the medical report which shows advocate Mdamu to have been attending medical checkup in September 2016, March 2017, 24/4/2017, 27/4/2017 and *Adde.*

24/11/2017, does not state that the patient was admitted in hospital on the date of 30/01/2017 when the matter was dismissed.

The Hon. Chairman went further to find that, there was no any medical report from KCMC Moshi Hospital to prove the claims at paragraph 6 of Mr. Mdamu's affidavit that he was admitted in the said hospital on 30/01/2017. To sum up, the Hon. Chairman ruled that the applicant failed to disclose a good cause for extension of time.

Having gone through the records which includes proceedings and ruling of the Court, I have failed to find any error material to the merit of the case which involves injustice on the applicant.

The applicant has moved the Tribunal in the application for extension of time to file an application to set aside the dismissal order. It is trite law that in an application for extension of time, the applicant must show a good cause for failing to do what was supposed to be done within the prescribed time. The extension of time being the discretion of the Court, the applicant is obliged to show good or sufficient cause before the Court can exercise that discretion powers.

In the celebrated case of **Lyamuya Construction Company Limited vs. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), it was held that for the Court to exercise its judicial discretion, the applicant must account for all the period of delay, the delay should not be inordinate, the applicant

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must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action he intends to take, and if the Court feels that there are 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.

In the Application No. 496 of 2018, the Hon. Chairman was correct to find that there was no sufficient reasons advanced by the applicant which could have moved the Court to grant the prayer for extension of time. I have seen the two affidavits of the applicant and her counsel Mr. Mdamu. In her affidavit, the applicant did not account for each day of delay, same of the advocate who did not attach the medical report to prove that he indeed was admitted in the hospital on the date of dismissal.

Basing on the above analysis, as said earlier, I have failed to see any error material which was committed by the District Tribunal for this Court to exercise its powers under Section 43 of the Land Disputes Court Act.

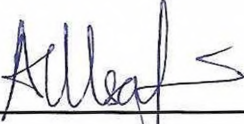
In his submission, the applicant through her advocate claimed that, the Chairman proceeded to dismiss the application without observing the ground of sickness. It is my view that, the Chairman in his ruling, did observe the ground of sickness which was raised by the applicant and her advocate but find it wanting for failure of the applicant and his advocate to sufficiently prove it before the Court. *Adle.*

For the above reasons, I find this application to have no merit and I dismiss it with costs.

It is so ordered.

Dated and Signed at Dar es Salaam this 22nd day of June, 2022.




A. MSAFIRI
JUDGE