

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 201 OF 2022

*(Arising from the and Application No.105 of 2012 of Temeke District
Land and Housing Tribunal for Temeke)*

SIMON M. MERERE APPLICANT

VERSUS

BETHOLD NKALIAMUNU 1ST RESPONDENT

HUSSEIN R. RUHEBA 2ND RESPONDENT

KABANGO GENERAL BUSINESS (T) LTD 3RD RESPONDENT

TRIBUNAL BROKERS 4TH RESPONDENT

RULING

Date of Last order: 21.06.2022

Date of Ruling: 21.06.2022

A.Z.MGEYEKWA, J

Ordinarily, the Applicant had instituted Land Application No. 153 of 2020 in the District Land and Housing Tribunal for Temeke at Temeke. The same was dismissed for being res judicata.

Being aggrieved with the decision of the District Land and Housing Tribunal for Temeke at Temeke in Application No. 153 of 2020 delivered on 19th November, 2021, before Hon. P. I. Chinyele Chairman. The applicant on 29th April, 2022 lodged this application for an extension of time for the Applicant to file revision against the decision of the District Land and Housing Tribunal for Temeke at Temeke delivered on 19th November, 2021.

The Application was preferred by way of Chamber Summons and was made under section 14 of the Law of Limitation Act, Cap 89 [R.E. 2002]. The application is supported by an affidavit, deponed by Simon M. Merere, the applicant. The respondents filed a counter-affidavit generally disputing the applicant's averments.

When the matter was called for hearing, on 21st June, 2022, the applicant had the legal service of Ms. Martha Mohamed, learned Advocate, whereas the 1st and 3rd respondents were present in person, while the 2nd respondent was absent despite the fact that was aware that the matter was scheduled for hearing. Thus, the court proceeded to determine the application *ex parte* against the 2nd respondent.

In her submission, Ms. Martha Mohamed stated that the applicant's delay to file an application for revision within time was caused by two reasons. The first reason; the applicant fell sick on 30th December, 2021.

To support her submission she referred this court to the attached Annexure 2, a Medical Examination Form dated 30th December, 2021, the second reason; the applicant delayed to receive a copy of the Judgment. She added that the applicant obtained the said copies on 17th December, 2021.

Ms. Martha also contended that the said application was tainted with illegality. She complained that the issue of res judicata could not arise because the applicant was not a party to the Ward Tribunal where the matter originated.

On the strength of the above submission, Ms. Martha beckoned upon this court to grant the applicant's application.

In reply, the 3rd respondent contended that the attached medical certificates show the applicant was sick on 30th December, 2021, and 10th February, 2022 while the ruling was delivered on 19th November, 2021. Thus, in his view, the applicant had enough time to file an application for revision. Ending, he urged this court to dismiss the applicant's application with costs.

I have considered the rival submissions from the parties' pleadings and oral submissions before me during the hearing. The main issue for

determination is whether or not the applicant has adduced good cause for an extension of time.

Starting with the ground of sickness, in my opinion, this issue of sickness could not stand as the applicant had enough time to pursue his right, however, no proof of due diligence was taken by the applicant to obtain a copy of Judgment from the tribunal until when the same was supplied to him on 17th December, 2021.

Concerning the ground of illegality, it has been held in times without number that where illegality exists and is pleaded as a ground the same as well constitute a good cause for an extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported) and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** (supra) the Court of Appeal of Tanzania 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 straight." [Emphasis added].

Therefore, I fully subscribe to the submission of the learned counsel for the applicant that the ground of illegality is a sufficient cause for an extension of time to rectify the raised anomaly. See also the case of **Badru Issa Badru v Omary Kilendu** (supra) the Court of Appeal of Tanzania held that:-

" ...I am of the considered view that even though there is a considerable delay in the application, pertinent issues have been raised. First,.. there is an allegation of illegality, irregularities, and impropriety... which cannot be brushed aside."

The illegality as per paragraph 8 of his affidavit, is alleged to reside in the powers exercised by the trial tribunal in excess of its hearing the application that the matter was res judicata. In his submission, the learned counsel for the applicant elaborated that the applicant was not a part of the case thus, it was not correct to dismiss the matter for the reason that the matter was res judicata.

Applying the authority stated in the case of **Praygod Mbaga v The Government of Kenya, Criminal Investigation Department and The Hon. Attorney General of Tanzania**, Civil Reference No. 04 of 2019. It is clear that where illegality exists and is pleaded as a ground, the same as well constitute a good cause for an extension of time.

In sum, based on the foregoing analysis, I am satisfied that the above-ground of illegality is evident that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge an application for revision before this court within 45 days from today.

Order accordingly.

Dated at Dar es Salaam this date 21st June, 2022.



A.Z.MGEYEKWA
JUDGE

21.06.2022

Ruling delivered on 21st June, 2022 via video conferencing whereby Ms. Martha Mohamed, learned counsel for the applicant, the 1st and 3rd respondents were remotely present.



A.Z.MGEYEKWA
JUDGE

21.06.2022