

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 188 OF 2021

(Originating from the Misc. Land Application No.327 of 2018 of Temeke District Land
and Housing Tribunal)

MWANGAZA YUSUPH MPELEMBEAPPLICANT

VERSUS

FESTO HAULE.....RESPONDENT

RULING

14/04/2022 & 06/06/2022

Masoud, J.

The applicant is applying for extension of time to file revision against the decision of the Temeke District Land and Housing Tribunal (**DLHT**) in Misc. Application No.327 of 2018 delivered on 23/08/2019. The application is made under Section 14(1) of the **Law of Limitation Act Cap 89 R.E. 2019** (Hereinafter **the Limitation Act**).

It is accompanied with a chamber summons and the affidavit deponed by

Mwangaza Yusuph Mpelembe, the applicant. It was opposed by the respondent who filed a counter affidavit. A reply to the counter affidavit was also filed by the applicant challenging matters raised in the counter affidavit. While the Applicant was represented by Mr. Victor Mhana, Advocate the Respondent appeared in person and un represented.

The application was conducted by oral hearing. Rival arguments ensued which reflected the averments in the affidavit and counter affidavit of the applicant and the respondent. The crux of the submissions and the rival arguments were in relation to whether there were sufficient reasons to enable the court exercise its discretion in favour of the extension.

The applicant's arguments were hinged on the claim of death of her husband, the filing of an application (i.e Misc. Application No. 513 of 2020) on 10/09/2020 by an administrator of the estate of her husband against the applicant herein and the respondent, and her filing on 03/11/2020 of an application for revision (Land Revision No. 49 of 2020) which ended up being withdrawn as it was not properly filed, and illegalities contained in the drawn order for Misc Application No. 327 of 2018 which purports to arise from a settlement deed, whilst the only compromise entered required the applicant to withdraw all cases pending against the

respondent and indeed the applicant withdrew all the cases, and the fact that the said withdrawal was not reflected in the drawn order.

The respondent's argument essentially did not dispute the deed of compromise entered and the fact that the case at the district tribunal was filed by the applicant. He remained silent on the alleged illegalities for he did not say anything as to the allegation that the drawn order did not reflect the withdrawal envisioned in the deed of compromise.

Having carefully considered the rival submissions by both parties, I have this to say, it is a trite law that an application for extension of time is entirely in the discretion of the court. However such discretion should be exercised judiciously by considering the guidelines established in the celebrated case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (Unreported)**, among others, in which the following conditions are supposed to be fulfilled for the application of extension of time to be granted:

- i. *The applicant must account for all the period of delay.*
- ii. *The delay should not be inordinate.*

- iii. *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- iv. *If the court feels there are other sufficient reasons such as the existence of point of law of sufficient importance, such as illegality of the decision sought to be challenge.*

I did not see the reasons advanced other than the allegation of illegalities as accounting for each and every day of the delay. I am in this respect mindful of the reason relating to the applicant's loss of her husband, the filing of the application for revision which ended up being withdrawn, and the matter allegedly filed by the administrator of the estate of her deceased husband.

I say so because the period of delay was after all not defined and not shown so that the court could easily reckon the delay in relation to the alleged reasons. Pursuant to the provision of Item 21 of part III of the Law of Limitation Act, cap. 89 R.E 2019, the applicant was required to file her revision within 60 days from the date she became aware of the drawn order which seems to be on 1/09/2020 if I go by her affidavit. The applicant was thus expected to clearly state the period of delay and account for each day of the delay.

As regard to the allegation of illegalities, I was told that the drawn order served to the applicant is tainted with illegalities as it does not reflect the matter that was withdrawn. There were other claims in relation to the allegation that the order is tainted with illegalities which I need not go to their details as the same are apparent in the affidavit supporting the application.

It suffices to say that the deed of comprise attached to the applicant's affidavit is apparent that the cases filed by the applicant were to be withdrawn of which the respondent did not dispute in any way and thus the deed seemingly did not envisaged recording a settlement. There is thus an issue as to the basis of the alleged drawn order and hence the complains raised. All these make the allegation of illegality apparent on the face of the record and vital to the matter at hand in so far as it relates to right to be heard and the trial tribunal's record.

In the case of **VIP Engineering and Marketing Limited and Two Others vs Citibank Tanzania Limited, Consolidated Civil Reference No.6,7 and 2006** the court held that;

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (now Rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay"

Therefore, the fact that there is a complaint of illegality in the drawn order intended to be revised, notwithstanding the fact that the applicant failed to account for each day of delay, it suffices to move this court to grant the extension of time so that the alleged illegality can be addressed by the court.

In the results and owing to the above findings, this application is meritorious and is herein allowed. The applicant shall file the said revision within **thirty (30) days** from the date of this ruling. Considering the circumstances of the matter at stake, it is prudent that the costs shall in the circumstances follow events.

It is so ordered.

Dated at Dar es Salaam this 6th day of June, 2022.


B.S. Masoud
JUDGE

