

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

**MISC. LAND APPLICATION NO. 506 OF 2021**

**JACKSON ERNEST MBWILE** (Administrator of the  
Estate of the late JUDITH JACKSON MBWILE) .....**APPLICANT**

**VERSUS**

**FELIX KESSY**.....**1<sup>ST</sup> RESPONDENT**  
**MWAMVITA AYUBU**.....**2<sup>ND</sup> RESPONDENT**

Date of Last Order: 15.06.2022  
Date of Ruling 25.07.2022

**RULING**

**V.L. MAKANI, J**

This application is by JACKSON ERNEST MBWILE as the Administrator of the estate of the late JUDITH JACKSON MBWILE. He is applying for extension of time within which to file an application for revision in respect of the judgment and decree of Kinondoni District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 33 of 2011.

The application is made under section 14(1) of the Law of Limitation Act, CAP 89 RE 2019 (the **Limitation Act**), and Rule 41 (1) and (2) of the Land Disputes Courts Act, CAP 216 RE 2019 and section 95 of the Civil Procedure Code, CAP 33 RE 2019 (the **CPC**). The application

is supported by the affidavit of the applicant. Mr. Mohamed Tibanyendera, Advocate, filed a counter-affidavit on behalf of the 1<sup>st</sup> respondent in opposition of the application. The 2<sup>nd</sup> respondent did not enter appearance despite being served by way of publication in Mwananchi Newspaper of 17/03/2022. The matter proceeded ex-parte against her.

With leave of the court the application proceeded by way of written submissions. Mr. Jovin Tibenda, Advocate submitted on behalf of the applicant. He said that the applicant was only aware of the existence of the ex-parte decree in 2017 when the 1<sup>st</sup> respondent filed the execution proceedings against the 2<sup>nd</sup> respondent (**Annexure JM/5**). That the late Judith Jackson Mbwile filed objection proceedings which were struck out on 21/10/2019. That in the year 2021 the 1<sup>st</sup> respondent attempted to enforce the ex-parte decree. The applicant is thus seeking extension of time to file an application for revision as he was not party in Land Application No.33 of 2011 between the 1<sup>st</sup> and 2<sup>nd</sup> respondents while the late Judith Jackson Mbwile legally owns the suit property (Annexure JM/2 to the affidavit). That the remedy available is revision. He insisted that granting extension of time is in the discretion of the court however

the applicant must demonstrate sufficient reasons. He placed his reliance in the case of **Vodacom Foundation vs. Commissioner General (TRA), Civil Application No.107/20 of 2017, (CAT-DSM)** (unreported). He prayed for the application to be allowed.

In his reply, Mr. Tibanyenda said that, the judgment which the applicant wants revision against was delivered in November 2011 and this application for extension of time has been filed in September 2021. That the delay of 10 years is extraordinary. He said objection proceedings filed by the applicant ended on 21/10/2019. That the applicant remained silent until 21/09/2021 to file this application. He said that extension of time cannot be granted unless the applicant supplies sufficient cause for the delay. He said that the applicant became aware of the impugned decision on 21/09/2021 while he was aware of the decision since 2017. He said she did not take any action for four years and further pointed out that the applicant ought to have accounted account for each and every day of delay but he has not done so. That his allegation that he instituted Land Application No.28 of 2018 cannot constitute good cause as he cannot benefit from his own wrong. He relied on the case of **Exim Bank (T) Ltd vs. Jacquilene A. Kweka, Civil Application No.348 of 2020**

(unreported). He prayed for this application to be dismissed with costs.

In his brief rejoinder, Mr. Tibenda reiterated his main submission.

It is a settled principle of the law that a party seeking for extension of time must show good cause for the court to exercise its discretionary power to grant or refuse such an extension. What amounts to good cause depends on the circumstances of each case; certain factors may be considered by the court in determining whether the applicant had advanced good cause. See the case of **Joel Silomba Vs. Republic, Criminal Application No. 5 Of 2012 (CAT)** (unreported) and **Vodacom Foundation** (supra).

I have gone through the submissions by the parties, affidavit and counter-affidavit filed. Admittedly, the applicant was not a party to the Land Application No.33 of 2011 at the Tribunal. Indeed, the late Judith Mbwire only became aware of the decision of this case in 2017. Going through the records, the late Judith Mbwire filed objection proceedings vide Misc. Land Application No.28 of 2018 which proceedings were struck out on 21.10.2019. The applicant thereafter

filed Land Application No. 176 of 2021 and Misc. Land Application No. 533 of 2021 and all these were withdrawn on 09/08/2021. The applicant then decided to file this application on 21/09/2021.

Looking at the affidavit there has been a lot of efforts by the applicant to challenge the decision in Land Application No. 33 of 2011 as explained above. The late Judith Mwile and his administrator Jackson Mwile have never been idle as Mr. Tibayendera wants this court to believe. They have been in court corridors seeking to exercise their right and as said the last decision of the Tribunal was on 16/08/2021 when the applicant withdrew their application on account of development of the law in **Samwel Ezekiel Mwaisumbe vs. Faiz Industries Limited, Land Case No. 57 of 2012 (HC-DSM)** (unreported) (Hon. Teemba,J). This application has been filed on 21/09/2021 about one month after the last decision and Mathew Kakamba, the Advocate who was then representing the applicant reflected in his affidavit the efforts that were made by the applicant in ensuring that they are heard after becoming aware of the decision by the Tribunal in the case between the 1<sup>st</sup> and 2<sup>nd</sup> respondents in Land Application No. 33 of 2011 of which the late Judith Mwile was

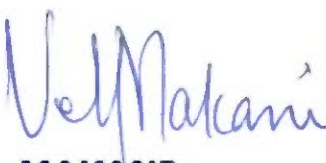
not a party. In the case of **Vodacom Foundation** (supra) the court said:

*"What amounts to good cause cannot be laid by any hard and fast rules but will be dependent upon the facts obtaining in each particular case. That is, each case will be decided on its own merits, of course taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been explained away as well as whether there was diligence on the part of the applicant."*

In my view the applicant has brought this application promptly (one month) after the last decision of the Tribunal, and the late Judith Mbwile and applicant herein have shown diligence in making a follow up of the matter. In the circumstances, I find that the reasons advanced are sufficient to enable the court to exercise its discretion in granting the extension of time sought.

In the result the application is granted, and the applicant is given **30 days** from the date of this ruling within which to file his application for revision. There shall be no order as to costs. It is so ordered.



  
**V.L. MAKANI**  
**JUDGE**  
**25/07/2022**