

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

MISC. LAND CASE APPLICATION NO. 302 OF 2022

{Arising from Land Application No. 456 of 2018, by Kinondoni District Land and Housing Tribunal, before Hon. R. Mwakibuja, Chairperson}

HAMZA AMAD MBOGO.....1ST APPLICANT
SAID ATHUMAN KIRUMBI2ND APPLICANT
SEMEN AMAN KESSY.....3RD APPLICANT
ELIASA ATHUMAN KIRUMBI.....4TH APPLICANT
JUMA HEMED MALAPA.....5TH APPLICANT

VERSUS

LAZARO KANAYARO.....1ST RESPONDENT
HEMED ATHUMAN.....2ND RESPONDENT
MLINDA JOHN.....3RD RESPONDENT
PIUS JULIUS.....4TH RESPONDENT
KABANGO GENERAL BUSINESS(T) LTD.....5TH RESPONDENT

R U L I N G

Date of Last Order: 20.07.2022

Date of Ruling: 29.07.2022

T. N. MWENEGOHA, J.

The applicants are seeking for an order of extension of time so that they can lodge an application for revision out of time, against the decision delivered by Hon R. Mwakibuja, vide Land Application No.456 of 2018, dated 24/11/2021. The application was brought under section 14(1) of the Law of Limitations Act, Cap 83, R. E. 2019 and accompanied by joint

affidavit of all five applicants herein above. The same was heard by way of written submissions and against the 2nd to 5th respondents.

Advocate Dominicus Nkwera, appeared for the applicants. He insisted that, the reason prompting the applicants to prefer this case is the existence of illegalities in the impugned decision of Honourable Mwakibuja, learned Chairperson of the Kinondoni District, Land and Housing Tribunal. He went on to point out the said illegalities to include among others a denial of the right to be heard on part of the applicants. That, the 1st respondents sued the wrong parties who are not the owners of the suit land and the value of the subject matter was not included in the application before the trial tribunal. Mr. Nkwera invited the court to visit the case of **Ezrom Magesa Maryogo vs. Kassim Mohamed Said & Another, Civil Application No. 227 of 2015, Court of Appeal of Tanzania at Dar es Salaam, (unreported)**, where it was observed that;-

"A claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay"

In reply, Advocate Esther Nyabhukoli Maugo for the 1st respondent was of the view that, the applicants have failed to show to this court the chances of succeeding if this application is granted. That, the whole application is just a wastage of court's time. There is no chances of Revision if the application succeeds, hence the same should be dismissed.

In his brief rejoinder, Mr. Nkwera reiterated his submissions in chief and prayed for the application to be allowed.

I have considered the submissions of the applicants and the respondents in this application. Also, I have gone through the affidavit and counter affidavits of both parties. As stated in a number of authorities, the issue for determination in the instant application is whether the applicants have given sufficient reasons and also accounted for the delay to take their intended course. See **Oswald Masatu Mwinzarubi vs. Tanzania Fish Processors LTD, Court of Appeal of Tanzania, at Mwanza, Civil Application No. 13 of 2010, (unreported)**.

In the application at hand, the counsel for the applicants has relied on the existence of illegalities in the decision of Hon. R Mwakibuja, Chairperson of Temeke District Land and Housing Tribunal. He mentioned the said illegalities to include the denial of right to be heard on part of the applicants; the 1st respondents sued the wrong parties who are not the owners of the suit land and the value of the subject matter was not included in the application before the trial tribunal.

I agree that, a claim of illegalities in a disputed decision constitutes a sufficient ground for allowing an application for extension of time, see **Ezrom Magesa Maryogo vs. Kassim Mohamed Said & Another, (supra)**. However, it is well settled that, such illegalities should be apparent on the face of the impugned decision, see **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010, Court of Appeal of Tanzania, (unreported)**.

I went through the impugned decision of Hon.Mwakibuja attached with this application. I failed to see any of the mentioned illegalities. Above all, all of the above applicants were not parties to the Land Application No.456 of 2018 before District Land and Housing Tribunal for Kinondoni. Hence, they cannot fault the trial tribunal for not affording them a right to be heard on the case which they were not involved with. Further, whether the 1st respondent sued wrong person or not is a fact that need evidence and argument. The same cannot be termed as an illegality. It also applies to the other facts including the claim of an application being filed without mentioning a value of the subject matter.

In the end, the instant application is dismissed for the reasons I have given herein above. No order as to costs.




T. N. MWENEGOHA

JUDGE

29/07/2022