

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

MISC. LAND CASE APPLICATION NO. 285 OF 2022

*{Arising from the decision of the District Land and Housing Tribunal of Kinondoni in
Land Appeal No. 165 of 2014, dated 2nd May, 2017}*

SOPHIA KASHAMBA.....APPLICANT
VERSUS
MATHIAS P. KATOTO.....1st RESPONDENT
JOHN STEPHEN ELISHA.....2ND RESPONDENT

R U L I N G

Date of Last Order: 21.07.2022
Date of Ruling: 29.07.2022

T. N. MWENEGOHA, J.

The applicant seeks to extend time within which to file an application for revision against the decision of the District Land and Housing Tribunal for Kinondoni vide Land Appeal No. 165 of 2014, decided by Hon. R. B. Mbilinyi on the 2nd of May, 2017. The application was brought under Sections 14(1) and (2) of the Law of Limitation Act, Cap 89 R. E. 2019, and supported by the affidavit of Sophia Kashamba, the applicant herein above. The same was heard by way of written submissions. Advocate Isaac Nassor appeared for the applicant while the respondent enjoyed the legal services of Advocate Deogratius Godfrey.

In his submissions in favour of the application, the applicant's counsel maintained that, there are illegalities contained in the decision of the District Land and Housing Tribunal for Kinondoni. That, the Trial

Chairperson turned an appeal case to a fresh application. The said illegalities are sufficient reasons for the court to extend the time for the applicant to present his intended application. This was stated in **Eqbal Ebrahim vs. Alexander K. Wahyungi, Civil Application No. 235/17 of 2020, Court of Appeal of Tanzania (unreported)**.

In reply, the counsel for the respondent insisted that, the claims by the applicant's counsel that the trial chairperson changed the appeal case into an application are unfounded. That, there is no serious illegality that needs an attention of the court. And that, the applicant has not shown any sufficient cause for his application to be allowed.

In rejoinder, the applicant's counsel reiterated his submissions in chief.

Having considered the submissions of both parties, the affidavit in support of the application and counter affidavit against it, the issue for determination is whether the application has merits or not.

On records I have the impugned decision which has been attached with the application at hand. On the face of it, the decision contains illegalities as claimed by the counsel for the applicant. The said judgment was in respect of an Appeal case, vide Misc. Land Appeal No. 165 of 2014. The case as per the said decision appears to have its roots from the decision of Goba Ward Tribunal, vide Land Application No. 252 of 2016.

However, upon reading the decision, I realized that, the trial chairperson treated it as a fresh dispute. That, the case was heard afresh where pleadings were filed (Application and the Written statement of Defence), parties were also ordered to call witnesses before the said judgment was entered. These issues are apparent on the face of the decision by Hon. R.

B. Mbilinyi and are sufficient proof of the existence of illegalities in his decision.

As it has already been settled in a number of authorities, a claim of illegality constitutes a sufficient cause for extending the time in favour of the applicant, this court also finds the application at hand to have merits. See **Eqbal Ebrahim vs. Alexander K. Wahyungi**, (supra).

Eventually, the same is allowed with costs. The applicant is given 14 days to file his application for revision.

It is so ordered.




T. N. MWENEGOHA

JUDGE

29/07/2022

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

MISC. LAND APPLICATION NO. 137 OF 2022

(Arising from Land Application No. 32 of 2020, by Temeke District Land and Housing Tribunal, before Hon. Chinyele, Chairperson)

FARIDA MASHALLAH.....1ST APPLICANT

**HASSANI SALEHE MPENDU (Administrator of the Estate of the late
SALEHE SALUM MPENDU)2ND APPLICANT**

VERSUS

NATIONAL MICROFINANCE BANK PLC.....1ST RESPONDENT
ACTIVE RECOVERIES LTD.....2ND RESPONDENT
DEUS SAMWEL MASAWA.....3RD RESPONDENT

R U L I N G

Date of Last Order: 13.06.2022

Date of Ruling: 28.07.2022

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. Chinyere, vide Misc. Application No. 32 of 2022. The application was brought under Section 14(1) of the Law of Limitations Act, Cap 83, R. E. 2019 and accompanied by the affidavit of the joint affidavit Farid Mashallah and Hassan Salehe Mpendu, the applicants here in above.

The same was heard by way of written submissions and against the 2nd and 3rd respondent.

Advocate Bwire Benson Kuboja appeared for the applicants. He insisted that, the reasons which prompted the applicants to prefer this case is the existence of illegalities in the impugned decision of Honourable Chinyele, learned Chairperson of the Temeke District, Land and Housing Tribunal. He went on to point out the said illegalities to include the denial of the right to be heard on part of the applicants, also the act of a presiding chairperson to proceed with the case while he is not a fit judicial officer to entertain the said case. His arguments were backed up by the case of **Principal Secretary Ministry of Defence and National Service vs. Devram Valambia (1992) TLR 183.**

In reply, Advocate Ignas Joachim Komba for the 1st respondent was of the view that, the applicants have failed to account for their delay to take their intended course. That, the impugned decision was delivered on the 21st June 2021, the applicants obtained the copies of the said decision on the 28th August 2021. That, the applicants' counsel did not give any explanation as to why the application for revision was not filed within time. This period which the applicants stayed without taking any action should be accounted for, otherwise their delay is unnecessary and unjustifiable. He cited the case of **Dr. Ally Shabhay vs. Tanga Bohora Jamaat (1997) TLR 305:-**

"those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence."

As for the existence of illegalities in the decision of Hon. Chinyele, the 1st respondent's counsel was of the view that, the said illegalities are not on the face of records. Hence, they are of no sufficient importance to warrant any court's attention as decided in **Ngao Godwin Losero vs. Julius Mwarabu, Civil Application No. 10 of 2015, Court of Appeal of Tanzania at Arusha.**

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

I have considered the submissions of the applicant and the respondents in this application. Also, I have gone through the affidavit and counter affidavits of both parties. The question need determination in the instant application is whether the applicants have given sufficient reasons and also accounted for the delay to take their intended action. These are the canon rules for an application for extension of time to succeed, 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. Chinyele, 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 and the question of the capacity to preside over the matter by Hon. Chinyele. As argued by the 1st respondent's counsel, these two issues are matter of facts, not of law that can be seen apparent on the face of records. They need evidence and arguments to prove on their existence or non-existence. The same cannot constitute an illegality, capable of being looked upon by courts, See **Ngao Godwin Losero (supra)**, and

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). Therefore, I find the reasons for delay given by the applicants through their respective counsel to be insufficient to warrant an enlargement of time for their intended matter. Above all, the applicants failed to account for the days they stayed without taking any action after being supplied with the copies of the impugned decision.

Therefore, I am of the view that the instant application is devoid of merits. I therefore dismiss the same with costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

28/07/2022