IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 248 OF 2022

(Arising from Judgment and decree in Land Application No. 192 of 2007, District Land and Housing Tribunal for Kinondoni at Kinondoni Hon. Mwihava-chairperson)

GLORY SEMU alias GLORY L. NDANSHAU.....APPLICANT

VERSUS

JOSEPH J. MAKIPONYA.....1ST RESPONDENT

LEONARD S. NDANSHAU.....2ND RESPONDENT

Date of last order: 9/8/2022

Date of ruling: 31/8/2022

RULING

A. MSAFIRI, J.

On the 20th day of May 2021, the applicant lodged an application in this Court by way of chamber summons under Section 14(1) of the Law of Limitation Act [CAP 89 R.E 2019], for the following orders;

i. *That this Honourable Court be pleased to extend time for filing revision out of time on grounds set forth in the annexed affidavit and on such other grounds which may be adduced on hearing date.*

ii. *That this Honourable court be pleased to give any other relief it deems fit and just to grant.*

The application is supported by an affidavit deposed by the applicant herein.

When this application was called on for hearing on 9th August 2022, Mr. Adolf Temba, Ms. Mariam Magina and Mr. Honest Kulaya learned advocates represented the applicant, the 1st and 2nd respondents respectively.

Before hearing had commenced, Mr. Kulaya learned advocate for the 2nd respondent rose and informed the Court that he was not opposing the application.

It is gathered from the record of this application that, the 1st respondent instituted Land Application No. 192 of 2007 against the 2nd respondent before the District Land and Housing Tribunal for Kinondoni (the trial tribunal). The 1st respondent claimed that the 2nd respondent had trespassed on his land described as Plot No. 45 Block A Mbezi (disputed premises).

In its judgment dated 9/11/2007 the trial Tribunal decided in favour of the 1st respondent and therefore the 2nd respondent was ordered to demolish his structures erected on the disputed premises.

The 1st respondent later lodged Application No. 765 of 2017 before the trial Tribunal seeking to execute the decree in Land Application No. 192 of 2007. The trial Tribunal granted the said application whereby the 2nd respondent was ordered to vacate from the disputed premises within 14 days else he would have been evicted.

In this application, the applicant is a wife of the 2nd respondent. In both the affidavit and submissions in support of the application, the applicant prayed for extension of time to file revision against the decision in Land Application No. 192 of 2007. The grounds put forward by the applicant in a bid to seek an extension of time are illegalities on the judgment of trial Tribunal in which it was only based on the assessors' opinion while there was no such opinion. It was contended that the judgment of the trial Tribunal was fabricated.

Similarly it was contended that the applicant was not a party to the original case hence her interest on the disputed premises should be protected because she contributed in the acquisition and development of

the disputed premises. On further submission by the learned advocate for the applicant it was claimed that the trial Tribunal had no jurisdiction to entertain the matter because the same was res judicata because the matter had already been determined by the Court.

On the other hand if the same was not res judicata the matter was filed out of time as the cause of action arose in 1984 while the application was instituted in 2007.

It was contended further that the offer letter was obtained illegally and fraudulently as was obtained 12 years back before approval plan over the disputed premises was issued. It was claimed that disputed premises is a matrimonial asset and it is occupied jointly. Hence the applicant prays the application be granted.

On reply, Ms. Magina learned advocate contended that the assessors gave opinion as clearly reflected on the trial Tribunal's judgment. It was further submitted that the applicant had a chance to be joined on the original matter and therefore she could protect her interest over the disputed premises.

It was further contended by the learned advocate of the 1st respondent that the applicant has not been able to account for the delay Alls.

and hence the application should be dismissed with costs. To fortify her stance, the learned advocate referred to me the decision of **FINCA Ltd v Boniface Mwalukisa** Civil Application No. 589 of 2018 Court of Appeal of Tanzania at Iringa (unreported).

On rejoinder Mr. Temba learned advocate for the applicant reiterated his submission in chief. He briefly submitted that the illegality on the face of record is sufficient reason for extension of time as it has been pointed out in the present matter.

Having gone through the submissions of the parties, rival and in support of the application, the issue which calls for the Court's determination is whether the application has merits.

In an application for extension of time like the present one, it is established principle that, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time. See the decisions in **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority,** Civil Reference No. 08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa,** Civil Application no. 4 of 2014 (both unreported).

In the instant application, the sole reason for extension of time advanced by the applicant is allegation of illegality. Where there is an

illegality there is no need to account for each day of the delay as expounded in the decision of **Exim Bank (Tanzania) Limited v Johan Christer Abrahamsson** Civil Reference No. 11 of 2018 (Unreported).

As rightly submitted by the learned advocate for the applicant in order to constitute illegality, it must be apparent on the face of the record such as the question of jurisdiction, not one that would be discovered by long drawn argument or process. This position of law has been restated by the Court in a number of cases including; **The Principal Secretary, Ministry of Defence And National Service v Devram P. Valambhia** [1992] T.L.R387**, Lyamuya Construction v Board Of Young Women Christians Association**, Civil Application No. 2 Of 2010 (Unreported).

I have keenly gone through the points of illegality raised by the applicant. I am of the settled mind that the claimed illegalities can be solved through long drawn argument and they are not apparent on the face of record. On the issue of assessors not giving opinion the judgment of the trial Tribunal reflects clearly that the assessors gave their opinion. The allegations by the applicant that the judgment was fabricated which to me appears to be very serious allegations should have been proved by evidence. Nothing on the judgment suggests that the same was fabricated.

On the issue of the matter before the trial Tribunal being res judicata as the matter had already been determined before the primary court, was stated clearly that in 1994, four people including the 2nd respondent invaded the disputed premises and demolished the 1st respondent's house. In 2003 the respondent invaded there again and constructed a structure. The facts show clearly that the application which the applicant seeks to challenge through revision was as result of 2003 invasion and that time it was the 1st respondent who trespassed the disputed premises hence the same could have not been res judicata.

Equally whether the applicant contributed in the acquisition of the disputed premises and whether she has interest over the disputed premises are matters to be resolved by the evidence and they are not errors apparent on the face of record.

It is for the foregoing reasons that I hold that the application lacks merits and it is hereby dismissed with costs.

THE HIGH COURT OF TANZANIA * LAND DIVISION *

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A. MSAFIRI,

JUDGE

31/8/2022