

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 443 OF 202

*(Originating from a decision of the Morogoro District Land and Housing Tribunal for
Temeke at Temeke in Land Application No. 26 of 2017)*

DEOGRATIAS BELIAN LEMA APPLICANT

VERSUS

ADAM ASSEY 1ST RESPONDENT

SAID MFINANGA 2ND RESPONDENT

AGNEVA MFINANGA 3RD RESPONDENT

ELLY NGOWO 4TH RESPONDENT

RULING

Date of last Order: 29.08.2022

Date of Ruling: 30.08.2022

A.Z. MGEYEKWA, J

The applicant filed this application before this court seeking leave to appeal before this court, out of time against the decision of the District Land and Housing Tribunal for Temeke at Temeke in Land Application No. 26 of 2017 dated 31st March, 2021. The application was made under

section 14 (1) of the Law of Limitation Act, Cap. 89 and section 95 of the Civil Procedure Civil Code Cap. 33 [R.E 2019]. The application is supported by an affidavit deposed by Deogratias Belian Lema, the applicant.

When the matter came for the court hearing on 29th August, 2022, Ms. Jacqueline Manyala, learned counsel represented the applicant. The respondents did not appear even after being served to appear in court. Therefore, this court ordered the matter to proceed *ex parte* succeeding the absence of the respondents.

In his submission, the applicant's counsel prayed for this court to adopt the applicant's affidavit and form part of his submission. The learned counsel for the applicant stated that the matter at the District Land and Housing Tribunal was between Said Mfinanga & others against Adam Assey. He went on to submit that in 2016, Adam Assey sold the suit land to the applicant, and the applicant constructed a house until 2020 when the applicant was implicated in an investigation. She added that in February, 2020, the applicant was under custody at the Prevention and Combating of Corruption headquarters until 12th June, 2020 when he was arraigned at Mwana RMs Court in Economic Case. The learned counsel for the applicant went on to submit that the applicant was placed in remand prison until July, 2021 when he was granted a conditional discharge. To

buttress her submission, she referred this court to an attached conditional discharge (Annexure A-2).

The learned counsel for the applicant did not end there. She stated that the applicant traveled to Monduli to attend his mother's funeral and had to administer the deceased's estate. Supporting her submission she referred this court to the attached death certificate (annexure A-3). Ms. Jaqueline continued to submit that on 24th June, 2022 the applicant traveled to Dra es Salaam then he was informed that strangers other than Adam Assey visited his plot. The learned counsel went on to submit that later the applicant realized that there was an *ex parte* Judgment delivered against Adam Assey. Hence this application.

On the strength of the above submission, the applicant's counsel urged this court to grant the applicant's application due to the reasons that the applicant all the time when the matter was going on at the tribunal he was not aware.

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR

93. It is settled law that an application for an extension of time is grantable where the applicant presents a credible case to warrant a grant of such extension. The law also requires the applicant to act in an equitable manner (See the Supreme Court of Kenya's decision in **Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others**, Sup. Ct. Application 16 of 2014). This requirement got a broad explanation in the celebrated decision of the Court of Appeal in **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, CAT-Civil Application No. 2 of 2010 (unreported), wherein key conditions on the grant of an application for extension of time were laid down. These are:

"(a) The applicant must account for all the periods of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action he intends to take.

(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."

Looking at the sequence of events by learned counsel for the applicant, it shows that the applicant's reliance in the quest for extension of time is well narrated from the time when he bought the suit land until when the

applicant realized that there was an *ex parte* judgment against the 1st respondent in favour of the 2nd, 3rd and 4th respondents. The applicant in paragraphs 6 and 7 of his affidavit stated that when the case at the Land and Housing Tribunal for Temeke was determined he was arrested in February, 2020 and stayed in custody at the PCCC headquarters until 12th June, 2020 when he was arraigned at Mwanza RM's Court in Economic Case No. 10 of 2020. In paragraph 9 the applicant stated that he was discharged on 2nd July, 2021 headed to Monduli to attend his mother's funeral, and had to administer the deceased's estate until its completion in 2022. To support his assertion the applicant attached order for conditional discharge dated 2nd July, 2021.

The applicant and the applicant in his affidavit stated that he stayed in Monduli until 24th, June, 2022. The applicant narrated the whole saga from 24th June, 2020 until the date when he lodged the instant application before this court on 2nd August, 2022. He stated that he traveled to Dar es Salam and managed to visit his suit land, and was informed that strangers visited the suit land. He met the 1st respondent who informed him that there was a case at the District Land and Housing Tribunal. The applicant took efforts to hire an advocate who made a perusal at the tribunal just to learn that there was an *ex parte* Judgment delivered on 31st March, 2021 as stated under paragraph 14 of the applicant's affidavit. Hence he filed

the instant application for revision before this court. It is apparently clear from records that the applicant has shown interest to see that justice is done. I have also considered the fact that the right of appeal is not only a statutory one but also a constitutional right, of which a person cannot be lightly denied when this court is there to determine the applicant's rights. In my view, once an appeal is eventually lodged before this court, this court will have to determine unpretentious issues brought by the applicant. In the upshot, I grant the application and the applicant has 21 days within which to institute his application for revision. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 30th August, 2022.




A.Z.MGEYEKWA
JUDGE
30.08.2022

Ruling delivered on 30th August, 2022 via video conferencing whereas Ms. Jaqueline Manyala, learned counsel for the applicant was remotely present.




A.Z.MGEYEKWA
JUDGE
30.08.2022