

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 429 OF 2022

(Arising from the Judgment of the District Land and Housing Tribunal in Land Application No. 231 of 2018 dated 27 September 2018)

FORTUNATA GERALD MASAWE

@ FORTUNATA PETER.....APPLICANT

VERSUS

DANIEL IRARAMO.....1ST RESPONDENT

GRACE NDYETABURA.....2ND RESPONDENT

PETER MICHAEL MSELE.....3RD RESPONDENT

RULING

Date of last Order:12/12/2022

Date of Ruling: 03/02/2023

K. D. MHINA, J.

This application is brought under certificate of urgency by way of chamber summons taken under section 14 (1) of the Law of Limitation Act, Cap 89 R: E 2019 (" the LLA"), whereas the applicant, Fortunata Gerald Masawe@ Fortunata Peter, instituted this application against the respondents, Daniel Iraramo Maswi, Grace Ndyetabura, and Peter Michael Masele.

The applicant, *inter-alia*, is seeking the following orders: -

- i. That this Court be pleased to extend the time for the Applicant to file Revision out of time.*

ii. Cost be provided

iii. Any other and further relief the Court may deem fit and just to order.

The chamber summons is supported by the affidavit sworn by Mr. Mluge Karoli Fabian, the counsel for the applicant, which expounds the grounds for the application.

A brief background, as gleaned from the record, is significant to appreciate what prompted the filing of this application.

The 1st respondent, on 19 May 2011, purchased an unsurveyed parcel of land located at Kimara King'ong'o (the suit land) for TZS 4,300,000/= . He bought that land from the 3rd respondent after he alleged that he was connected by the 2nd respondent. When he visited the suit land, he found another person erecting the structure, and that person claimed that he was the owner of the suit land. The person requested him to call the seller, i.e., the 3rd respondent, but he never found the seller as the efforts to trace him proved futile. When he approached the 2nd respondent, she was not cooperative.

Then the 1st respondent decided to file the matter at the District Land and Housing Tribunal for Kinondoni vide Application No. 231 of 2013 against the 2nd and 3rd respondents.

According to the application in paragraph 7 (c), (d), and (f), the applicant filed a case against the 2nd and 3rd respondents after discovering that he was deceived by the 2nd respondent and that he found that the suit land was not owned by the 3rd respondent contrary to the assurance of the 2nd respondent.

He claimed the following, I quote;

- (a) Compensation for the land value of TZS 4,300,000/= against
The first and second respondents jointly and severally.*
- (b) Payment of general damages for loss of money and land against
the first and second respondent jointly and severally.*
- (c) Any other relief (s) as the Hon. Tribunal may deem fit or just to
make or award.*

After the trial, the Tribunal Chairman entered a judgment in favour of the 1st and 2nd respondents and declared the 1st respondent as the lawful owner of the suit land. Further, the Tribunal declared that the 2nd

respondent duly participated in the sale agreement. On top of that, the Tribunal declared that whoever claims the rights from the suit land but did not bother applying to be joined is barred from preventing the buyer in any way from occupying it.

On 12 September 2019, vide Land Application No. 838 of 2018; the Tribunal appointed the Court Broker (Rhino Investment Co. Ltd) to conduct execution by ordering eviction in the suit land. That order "landed" into the hands of the applicant living in the suit land.

Upon being served, the applicant decided to file objection proceedings before the Tribunal vides Misc. Land Application No. 764 of 2019 raised the issue that the suit land belonged to her since 2006, and she constructed the house and lived with her family in the suit land. On 20 August 2021, the objection proceedings were dismissed.

Undaunted, the applicant approached the Tribunal again with application No 400 of 2021 but later, on 19 July 2022, the application was withdrawn, and the applicant decided to file this application on 29 July 2022.

At the hearing, the applicant was represented by Mr. Mluge Karoli Fabian, learned advocate. On the other hand, the 1st respondent was represented by Mr. Mafuru Mafuru, and the 2nd respondent by Ms. Beatrice Soka also learned advocates. The 3rd respondent was absent despite being served, and on 10 November 2022, this Court ordered the application to proceed ex-against him.

In his submission, Mr. Fabian submitted that the 1st respondent lodged an application before the Tribunal, i.e., Application No. 231 of 2013, claiming for the repayment of money that he was conned with when he purchased land from the wrong person. He said the applicant was not a party to that case which declared the 1st respondent the lawful owner.

He further submitted that vide Execution No 838 of 2018, the 1st respondent requested an eviction, but the applicant countered it by filing objection proceedings in Application No 769 of 2019. That application was dismissed, and again the applicant filed another application No 400 of 2021, seeking the declaration that she was the lawful owner of the suit land, but later the application was withdrawn.

Therefore, the applicant failed to file a Revision within time because he was struggling in the Tribunal by filling those applications.

Apart from the above, Mr. Fabian also submitted that in the impugned Tribunal decision, the 1st respondent was claiming to be given back his money, but instead, the tribunal declared him as a lawful owner of the suit land.

On behalf of the 1st respondent, Mr. Mafuru submitted that extension of time is the court's discretionary power, but it must be exercised judicially.

He further submitted that the applicant's affidavit did not advance any reason why an extension should be granted. He cited **Moto Matiko Mabanga vs. Ophir Energy PLC and two others**, Civil Application No. 463/01 of 2017 (Tanzlii); the Court pointed out the grounds to consider in extending time as;

- i. Lengthy of delay*
- ii. Reason for delay;*
- iii. Degree of prejudice that the respondent may suffer.*

Mr. Mafuru went on by submitting that it was also the duty of the applicant to account for each day of delay. He stated in this application that the applicant became aware on 30 October 2019 but filed this application on 29 September 2022, which is more than three years.

He submitted that Section 3 (1), item 1 of the LLA, provides that the time limit to file Revision must be within 60 days. Therefore, there was negligence on the part of the applicant, resulting in apathy and a long delay.

In his further submission, he cited **Tanzania Ports Authority vs. MS. Pembe Flour Mills Ltd**, Civil Application No. 49 of 2009 (unreported), where the Court of Appeal insisted the requisite of the applicant account for the reasons for the delay. But in this application, the applicant in the affidavit narrated the events instead of giving reasons for the delay.

Mr. Mafuru also submitted that the counsel for the applicant had touched the ground of illegality. But in the cited case of **Moto Matiko Mabanga**, the Court held that the illegality raised must be manifest on

the face of the record without a long-drawn argument. Therefore, what was raised in paragraph 10 of the affidavit is not illegality, and the 1st respondent countered that ground in his counter affidavit. He further stated that the issue was that the 1st respondent's land was invaded and among the prayers in the application was the court to give any other order as the court deemed fit.

He concluded by submitting that the issue raised by the applicant attracted long-drawn arguments drawn. Therefore, there was neither any reasonable account for the delay nor any ground of illegality. Further, there was no ground of prejudice shown by the applicant.

On her side, Ms. Soka advocate for the 2nd respondent, did not have anything to add.

In a brief rejoinder, Mr. Fabian submitted that the applicant was not a party to the matter, and that was why the affidavit revealed the reasons by the narration of events.

He further submitted that after the applicant became aware, he lodged an application for objection proceedings; therefore, each day of delay has been accounted for.

On the ground of illegality, he submitted that in Application No. 237 of 2013, the plaint in the cause of action and relief sought indicated that the claim was that the 1st respondent was conned and not otherwise.

Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the oral submission made by the learned counsel for the parties, the issue that has to be resolved is whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to Revision in this Court.

The Court of Appeal of Tanzania stressed this in **Sebastian Ndaula vs. Grace Rwamafa (Legal Personal Representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014 (Unreported), where the Court put it succinctly that in an application for extension of time, good cause to extend must be shown.

As to what may constitute a good case, again, the Court of Appeal in as rightly submitted by Mr. Mafuru, the factors were pointed out in **Moto Matiko Mabanga (Supra)** as good grounds to consider in extending time as;

- i. *Lengthy of delay*
- ii. *Reason for delay;*
- iii. *Degree of prejudice that the respondent may suffer.*

In accounting for the period of delay again, the Court of Appeal insisted that an applicant should account for each day of delay. In **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), it held that;

*"Delay of even a single day has to be accounted for otherwise
There would be no point of having rules prescribing periods
Within which certain steps have to be taken."*

Apart from the above in **Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambia [1999] TLR 182**, the Court of Appeal, established that illegality is sufficient ground to grant an extension of time.

Also, in **Brazafric Enterprises Ltd vs. Kaderes Peasants Development PLC**, Civil Application No. 421/08 of 2021 (Tanzlii), the Court of Appeal held that (on page 10);

"As intimated above, once illegality is raised and established, it Also, constitute a good cause for extending time".

I cited those cases with benchmarks to consider and test if the applicant passes the test by showing a good or sufficient cause either by accounting for a reason(s) for the delay and accounting for each day of delay or if illegality raised demonstrates a good cause.

In the application at hand, the applicant has raised two grounds for seeking an extension: -

One, illegality on the impugned decision.

Two, pursuing other applications before the Tribunal.

In deliberation and determination, I will start to consider the issue of illegality in the impugned decision.

On this, the entry point is the case of **Lyamuya Construction Co. Ltd Vs. Board of Registered Trustees of Young Women's Association of Tanzania**, Civil Application No.2 of 2010 (unreported), where the Court held that;

"The Court there emphasized that such point of law must be that of sufficient importance, and I would add that it must also be apparent on the face of the record, such as the question of Jurisdiction, not one that would be discovered by a drawn argument or process."

Therefore, from the above, it should be noted that it is trite that to constitute illegality, it must be a point of law, and the alleged point of law must be apparent on the face of the record. It should not require a drawn argument or process to be discovered.

The applicant complained that the 1st respondent did not claim the issue of ownership of the land suit. What was claimed was the compensation of TZS 4,300,000/= after the 1st respondent discovered that he was "conned." Therefore, he filed the case against the 3rd respondent who conned him and the 2nd respondent, whom he alleged was the one who connected him to the 3rd respondent. But the Tribunal declared the 1st respondent as the lawful owner of the suit land.

On the other hand, the 1st respondent, especially in paragraph 14 of the 1st respondent's counter affidavit, averred that I quote;

"The trial tribunal in granting relief (s) was not handcuffed on the heading(s) of relief (s) sought and it was further vested with jurisdiction to grant any relief it deemed fit after it had navigated its arguments or reasons and finally ordered that, the first respondent was a rightful owner of the suit land".

Further, in the submission, Mr. Mafuru added that the issue was that the 1st respondent's land was invaded and among the prayers in the application was the court to give any other order as the court deemed fit.

On the issue raised by Mr. Mafuru, specifically when he submitted that the issue was the 1st respondent's land was invaded, with respect, I disagree with him. Nowhere in the application filed at the Tribunal (Application No 231 of 2013) did the 1st respondent claim that his land was invaded. As I indicated earlier, I quoted what were the claims at Tribunal and what was decided by the Tribunal.

In my further deliberation and determination, it is uncontroverted that the first respondent was claiming for the purchase money of the suit land from the 2nd and 3rd respondents after discovering that the seller (3rd respondent) was not the owner of the suit land. The applicant was not a party to that suit which in the end declared the 1st respondent the lawful owner. The issue arose when the Tribunal composed its judgment as it was not claimed by the 1st respondent.

Taking into account the established principle established by the Court of Appeal in **Kumbwandumi Ndemfoo Ndossi vs. Mtei Bus Services Ltd**, Civil Appeal No. 257 of 2018 (Tanzlii), it is not proper to raise a new issue *suo motu*, in the course of composing the judgment and decide on it without according parties the right to be heard.

From the above, without going deep, I am convinced that on the face of the record, the applicant raises a legal point of sufficient importance which needs the attention of this Court by way of Revision. Further, I had considered that Revision is the only recourse available to the applicant to challenge the Tribunal decision as the applicant was not a party to the proceedings before the Tribunal. These proceedings affected her ownership in the suit land as she has no right to appeal.

In the circumstances, I am persuaded that the decision subject to intended revision is fraught with illegality, raising a point of law of sufficient importance to warrant this court's attention. The applicant advanced a good and sufficient cause to earn this court to exercise its discretion in granting an extension of time.

From the above, the ground of illegality alone suffices to dispose of the application; therefore, I see no need to deliberate and determine another ground raised in the application as it will not change the outcome of this application.

In the foregoing, therefore, I grant this application with costs. It is further ordered that the applicant to file an application for Revision to this Court fourteen (14) days from the date of delivery of this Ruling.

It is so ordered.

DATED at DAR ES SALAAM this 03/02/2023.





K. D. MHINA
JUDGE