

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 58 OF 2023**

(Arising from the Judgment and Ruling of the District Land and Housing  
Tribunal for Kinondoni in Land Application No.1166 of 2021)

**MARGRETH EVEREST MACHANGO ..... APPLICANT**

**VERSUS**

**SILVER SYLVESTER BILIGEYA ..... 1<sup>ST</sup> RESPONDENT**

**KIBANGO GENERAL BUSINESS LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 16.03.2023*

*Date of Ruling 17.03.2023*

**A.Z.MGEYEKWA, J**

I am called upon in this matter to decide whether this court should exercise its discretion under section 14 (1) of the Law of Limitation Act, Cap.89 and section 95 of the Civil Procedure Code Cap. 33 [R.E 2019] to extend time for the applicant to lodge a revision against the decision of the District Land and Housing Tribunal for Kinondoni dated 16<sup>th</sup> August, 2019. The

application is supported by an affidavit deponed by Margreth Everest Machango, the applicant. The 1<sup>st</sup> respondent resisted the application and demonstrated his resistance by filing a counter affidavit deponed by Silver Sylvester Bilegeya, the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent was duly being served to appear in court but he did not show appearance, therefore, this Court issued an order to proceed *ex parte* against him.

When the matter was called for hearing on 16<sup>th</sup> March, 2023, the applicant had the legal service of Daniel Lisanga, counsel and the 1<sup>st</sup> respondent enjoyed the legal service of Ms. Modesta, counsel.

In support of the application, Mr. Daniel urged this Court to adopt the affidavit of Margreth Machango to form part of his submission. The counsel argued that the applicant was evicted from his house by the 2<sup>nd</sup> respondent on 2<sup>nd</sup> August, 2022 without any order of this Court and she was not served with any prior notice. He went on to submit that in December, 2022 the counsel perused the file of the tribunal and found that there were previous applications before evicting her. He went on to submit that the 1<sup>st</sup> respondent instituted a case against other parties at Kinondoni District Land and Housing Tribunal in Application No. 165 of 2021 and the applicant was not aware of the pendency of the said application because she was not a party to the case.

Mr. Daniel contended that the applicant delayed lodging a revision and the delay was out of her control since she filed an application that was rejected for the reason that she did not attach a copy of the impugned ruling. He went on to submit that in an attempt to file a second application, the applicant noted that she was out of time, hence, this application. The counsel for the applicant submitted that in the instant application, the applicant is urging this Court to afford the applicant's right to be heard. He went on to submit that there are grounds for illegalities that are worth consideration of this Court.

In conclusion, Mr. Daniel beckoned upon this Court to extend time and allow the applicant to file a revision.

The application has been valiantly opposed by the 1<sup>st</sup> respondent's counsel. In the counter-affidavit sworn by the 1<sup>st</sup> respondent, the applicant's averments have been strongly denied. Ms. Modesta urged this Court to adopt the 1<sup>st</sup> respondent's counter affidavit to form part of her submission. She contended that it is not true that the applicant was not aware of the eviction order. Ms. Modesta argued that the applicant filed Application No. 256 of 2015 before Kinondoni District Land and Housing Tribunal against Majembe Auction Mart and Kigoma Finance and the 1<sup>st</sup> respondent was joined as a party to the case. The learned counsel for the

1<sup>st</sup> respondent continued to argue that the applicant did not show appearance, hence, her case was dismissed for want of prosecution. She went on to submit that the 1<sup>st</sup> respondent decided to file a fresh case against Kigoma Finance, and he was declared a winner. Ms. Modesta respondent came out forcefully and defended the trial court's decision as sound and reasoned because the applicant did not appear at the tribunal, hence the tribunal had no other means than to dismiss the case for want of prosecution.

Ms. Modesta spiritedly argued that that the instant application aims to delay the rights of the first respondent because the matter is pending in court for approximately 20 year and all those years the 1<sup>st</sup> respondent has never enjoyed his house.

In conclusion, the learned counsel for the applicant beckoned upon this Court to dismiss the instant application.

In his rejoinder, the applicant's counsel reiterated his submission in chief. He contended that there is no any case which was lodged by the 1<sup>st</sup> respondent against the applicant, the allegations are hearsay, and there was no any proof that the auction took place. Ending, the learned counsel

for the applicant beckoned upon this Court to grant the applicant's application and allow her to file a revision.

From the rival Advocates submissions, the kernel of the contest is the question whether or not the applicant has shown good cause to justify his application in terms of section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019] under which this application is brought.

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase 'good cause' but the court consistently considers factors such as the length of the delay involved; the reason for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal; whether there is a point of law of sufficient importance.

There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v Amos David Kassanda & 2 others Civil**

Application No.48/17/2018 and the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

As courts emphasize the need to account for each day of delay, it is been underscored, as well, that in determining what constitutes sufficient cause regard has to be had to all circumstances of a particular case. In the case of **Bushfire Hassan v Latina Lucia Masanya**, Civil Application NO.3 of 2007 (unreported) the Court of Appeal of Tanzania when addressing the issue of delay 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 ..."*

This stance was followed in many decisions among them being the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application

No. 589/12 of 2018 CAT delivered in May, 2019 and **Samo Ally Issack & Others v. R**, Criminal Appeal No. 136 of 2021 (unreported).

Encapsulated in the applicant submission and per the applicants' affidavit, it is clear that the execution order was issued on 29<sup>th</sup> June, 2022 and the applicant lodged this application for an extension of time to file a Revision on 14<sup>th</sup> February, 2023 a lapse of 8 months. I have gone through the applicant's affidavit and unable to find any sound reason to move this Court to grant her application. In paragraph 6 of affidavit, the applicant simply stated that she realized that the eviction order was issued on 30<sup>th</sup> June, 2022 without accounting each day of delay.

Likewise, the applicant's counsel in his oral submission narrated in length the issue of eviction and that the applicant was not a party to the suit without accounting for each day of delay. With respect, I am on the whole unpersuaded by the claim by Mr. Daniel that the applicant filed an application that was rejected by this Court, this ground is raised from the bar. The same is not pleaded in the applicant's affidavit. Therefore, as far as the length of the delay is concerned the applicant's application cannot stand because they did not account for each day of delay.

The applicant's counsel in his submission also stated that the applicant was denied right to be heard. In my view, this is a submission from the bar, and what Mr. Daniel did, through his submission, was to introduce points of law that were not specifically pleaded in the applicant's affidavit.

Moreover, the grounds raised in paragraph 9 of the applicant's affidavit that there is a serious procedural misconduct cannot be a ground of extension of time, the applicant did not state whether the impugned decision was attained with any illegalities. Therefore, in my view, the applicant has not laid a basis for grant of the extension of time based on point of law. At this juncture, this Court is more interested to look at the points of law which are on the face of the records and sufficiently important. In the case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported), the Court of Appeal of Tanzania held that:-

*" Since every party intending to appeal seeks to challenge a decision either on points of law or facts, **it cannot in my view be said that in Valambhia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an***



*extension of time if he applies for one. The Court there emphasized that such a point of law must be 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, (but), not one that would be discovered by a long drawn argument or process.” [Emphasis added].*

Therefore, what is stated in the applicant's affidavit, in my considered view is mere averment that the application had been filed without undue delay with no further explanations. As a result, the applicant has failed to show points of law that raise issues of general importance.

In consequence, thereto, hold that the applicant has failed to advance sufficient reasons to warrant this court to use its discretion to extend the time within which to file a Revision out of time.

In the upshot, this application is hereby dismissed with costs.

Order accordingly.

Dated at Dar es Salaam this date 17<sup>th</sup> March, 2023.



*Z. MGEYEKWA*

**JUDGE**

17.03.2023

Ruling delivered on the 17<sup>th</sup> March, 2023 in the presence of Mr. Daniel Lisan, counsel for the applicant and Ms. Modesta Medadi, counsel for the respondent.



A. Z. MGEYEKWA  
JUDGE  
17.03.2023