

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.741 OF 2022**

(Arising from the decision of the District Land and Housing Tribunal for Kibaha in Land Application No. 97 of 2016 before Hon. Njiwa, Chairman)

**MIJA MAGANGA ..... APPLICANT**

**VERSUS**

**MOHAMED MRISHO MLANGA ..... 1<sup>ST</sup> RESPONDENT**

**NASSORO RASHID NASSORO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 23.03.2023*

*Date of Ruling: 23.03.2023*

**A.Z.MGEYEKWA, J**

This ruling is in respect of an application for an extension of time to file a revision out of time against the decision of the District Land Housing Tribunal for Kibaha in Application No. 97 of 2016. The Application is made under section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. The Application is premised on the grounds appearing on the Chamber

Summons together with the supporting affidavit of Ms. Mija Maganga, the applicant affirmed on 15<sup>th</sup> November 2022.

The Application is contested. The 1<sup>st</sup> respondent filed the counter affidavit of Mohamed Mrisho Mlanga, the applicant affirmed on 13<sup>th</sup> December, 2022.

The hearing proceeded *ex parte* against the 2<sup>nd</sup> respondent who was duly summoned to appear in Court but he opted not to show an appearance.

During the hearing of the application, the applicant appeared in person, unrepresented whereas the 1<sup>st</sup> respondent enjoyed the legal service of Mr. Masinde Chisumo, learned Advocate.

In support of the application, Mija had not much to say, she urged this Court to adopt her affidavit to form part of her submission. The applicant submitted that she failed to lodge her application for revision within time because in April, all Magistrates at Kibaha were arrested and put in custody for three consecutive months, thus, she found herself out of time because all courts were not operating. The applicant submitted that she did not know the procedure of filing her application and hence had engaged the Legal and Human Rights Center to assist her in filing the instant application.

In conclusion, she beckoned upon this Court to grant her application for an extension of time to file a revision out of time.

At the outset, Mr. Masinde expressly made it clear that the application is without merits. The learned counsel urged this Court to adopt the 1<sup>st</sup> respondent's counter affidavit to form part of his submission. Mr. Masinde valiantly opposed that all Magistrates were arrested and held in custody for three months, instead the applicant is misleading this Court. Mr. Masinde contended that the applicant engaged an Advocate therefore, she knew what was going on. The learned counsel for the applicant contended that in Land Application No. 97 of 2016, the District Land and Housing Tribunal for Kibaha delivered its Judgment on 8<sup>th</sup> February 2017. And the applicant lodged the instant application on 21<sup>st</sup> November 2022, a lapse of 5 years.

Mr. Masinde further contended that the applicant instituted a fresh case concerning the same subject matter and this Court delivered a Judgment. He went on to submit that the applicant filed a Misc. Land Application No. 130 of 2022 for certification on point of law whereas Hon. Arufani, J granted her application. The counsel for the 1<sup>st</sup> respondent went on to submit that after a lapse of 120 days, the applicant filed the existence application for an extension of time. He forcefully contended that the record proves that the applicant is negligent for failure to file her application for revision within 60 days. To fortify his submission he referred this Court to Part III 1<sup>st</sup> Schedule Paragraph 21 (2) of the Law of Limitation Act Cap. 89 [R.E 2019]. The

learned counsel spiritedly argued that ignorance of the law is inapplicable in the matter at hand because the applicant was represented by an Advocate. The learned counsel for the 1<sup>st</sup> respondent stressed that the applicant has miserably failed to account for each day of delay.

On the strength of the above submission, the learned counsel for the 1<sup>st</sup> respondent beckoned upon this Court to dismiss the applicant's application with costs.

In his rejoinder, Ms. Mija, the applicant reiterated her submission in chief. She stressed that the Magistrates were arrested within three months. She urged this court to grant her application.

Having gone through the submissions from both parties it would appear to me to determine *whether the applicant has established sufficient reason for this court to enlarge time*. In her submission, the applicant relied on the grounds of delay. However, when I read her affidavit I noted that the applicant has mentioned a ground of illegality.

In addressing the ground of delay, there is a number of the decisions of the Court on the imperious requirement in an application for an extension of time for each day of delay to be accounted for. See the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) and **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No.

589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May 2019. In the case of **Bushfire Hassan** (supra) 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 **Mustafa Mohamed Raze v Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 (unreported).

Encapsulated in the applicant submission and per the applicants' affidavit, it is clear that the impugned Judgment of the District Land and Housing Tribunal for Kibaha in Land Application No. 97 of 2016 was delivered on 8<sup>th</sup> February 2017 and the applicant lodged this application for an extension of time on 21<sup>st</sup> November 2022 a lapse of 5 years and 8 months. Reading paragraphs 4, 5, 6, 7, 8, 9, and 10, the applicant has narrated what she did without accounting for each day of delay. Therefore, it is vivid that the applicant has failed to account for each day of delay. It is trite law that in an application for an extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Also, the law requires a party who seeks an extension of time to account for each day of delay, failure

to do so the Court cannot exercise its discretion in his favour. As far as the length of the delay is concerned the applicant's application cannot stand because he did not account for each day of delay at all.

The applicant in her oral submission had pleaded ignorance of law. I respectfully share Mr. Masinde's view that ignorance of the law is no excuse and cannot amount to sufficient cause for extending time to take a certain step. The Court of Appeal of Tanzania in **Godgrey Antony & Ifunda Kisite v. Republic**, Criminal Application No. 6 of 2008 had occasion to deal with a similar application containing a similar ground of ignorance of the law. It was held that: -

*"..After becoming aware of the decision, both of them did not take any action. What is the explanation for this delay. They were not aware of the law. In as much as there are no standard sufficient reasons, the applicants have failed to explain away the delay. In the event I have no option but to dismiss the application."*

I associate myself with the reasoning in the above case.

I have also looked at the issue of illegality stated in the applicant's affidavit as a second ground for an extension of time. The applicant in paragraph 11 of her affidavit simply stated that there is illegality since she has been condemned unheard by the District Land and Housing Tribunal for Kibaha in

Land Application No. 97 of 2016. I have noted that this issue was also raised by the applicant before this Court in Land Appeal No. 225 of 2021 and decided comprehensively by this Court and the appeal was dismissed. A copy of this Court decision is attached to the applicant's application. Thereafter, the applicant lodged an appeal at the Court of Appeal of Tanzania against that decision. Hence, this Court finds that there is no issue of illegality to be determined by this Court since the impugned decision was already referred by this Court in Land Appeal No. 225 of 2021. As a consequence, this Court finds no merit on this ground.

In the upshot, I proceed to dismiss this application without costs.

Order accordingly.

Dated at Dar es Salaam this date 23<sup>rd</sup> March 2023.

 A.Z.MGEYEKWA  
**JUDGE**  
23.03.2023

Ruling delivered on the 23<sup>rd</sup> March 2023 in the presence of the applicant and Mr. Masinde, counsel for the 1st respondent.

 A.Z.MGEYEKWA  
**JUDGE**  
23.03.2023