

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 533 OF 2022

MAKATA HELA JUMBE.....APPLICANT

VERSUS

**HON. ATTORNEY GENERAL.....1ST RESPONDENT
COMMISSIONER FOR LANDS, MINISTRY OF**

**LANDS, HOUSING AND HUMAN
SETTLEMENTS DEVELOPMENT.....2ND RESPONDENT**

**REGISTRAR OF TITLES, MINISTRY OF
LANDS, HOUSING AND HUMAN
SETTLEMENTS DEVELOPMENT.....3RD RESPONDENT**

**ADMINISTRATOR GENERAL,
REGISTERED INSOLVENCY TRUSTEESHIP.....4TH RESPONDENT**

RULING

06/02/2023 & 28/02/2023

L. HEMED, J

At this juncture, this Court, has been moved upon to grant extension of time for the applicant to file an intended appeal against the impugned decision of the Registrar of Titles hereinafter the 3rd respondents. The present application was preferred under section 14 (1) of the Law of

Limitation Act [Cap 89 R.E 2019] and Order XLIII, rule 2 of the Civil Procedure Code [Cap 33 R.E 2019].

The application is supported by an affidavit affirmed by one Makata Hela Jumbe filed on 7th day of September, 2022. Upon lapse of time to file counter affidavit thereof, on 8th day of November, 2022 leave was granted and equally the said application was contested *vide* the joint counter affidavit filed on 14th day of November, 2022. In compliance with the directives of this Court, the applicant filed his reply to the joint counter affidavit on 18th day of November, 2022.

By the consent of this Court, the parties argued the application by way of written submissions whereas, the applicant filed his submissions in chief on 12th day of December, 2022. The 1st , 2nd , 3rd and 4th respondents did not conform with the order of this Court, to say, no any written submissions from their sides inputted to the Court's record or shelves; hence, the matter is presumed to be heard *ex parte*.

Initially, I find it apt to narrate the written submissions in support of the application before me, albeit shortly. It is this, sometimes in 2004, one Asha Ally Ismael entered into a sale agreement with one Mary Daines Chimbenje, who was the legal personal representative of the late Francis Kally Chimbenje for disposition of Plot No. 596, Block "A" Sinza Area, Dar

es salaam and the same was registered in the name of the former under F.D 97118 dated 28th day of October, 2004 in the office of the 3rd respondent.

On 13th day of November, 2006, the said Asha Ally Ismael concluded a sale agreement with the applicant *apropos* to the landed property for a consideration of Tshs. 17,000,000/= (Seventeen Million Shillings). While the applicant was awaiting for completion of the transfer process, was notified by the 3rd respondent that there was a caveat dated 25th day of July, 2007. Following the lapse of the caveat notice, the 3rd respondent did not effect the transfer unto the name of the applicant from Asha Ally Ismael rather kept him with empty assurances.

To his dismay, the applicant averred to have been served with a demand notice with intention to be sued dated 30th day of December, 2015 in which the 4th respondent alleging that Asha Ally Ismael was not the lawful owner of the suit premises preceded by a notice of eviction from Nsombo & Company Limited dated 13th day of April, 2016.

Keenly fetching for his right, the applicant promptly commenced to pursue Land Case No. 130/ 2016 against Asha Ally Ismael, the 4th respondent and Nsombo Company Limited; Land Case No. 51/ 2020 against all respondents herein save for addition of Asha Ally Ismael; Misc.

Land Application No. 662/ 2020 against 3rd and 4th respondents'; Misc. Civil Notice No. 20/ 2022 against 3rd and 4th respondents' all in vain for faults and/ or reasons articulated therein respectively.

Avoiding further unnecessary repetitions, the advocate for the applicant has referred to this Court, mountain, of authorities to have their application being granted including provisions from different pieces of legislations and *precedents* to that effect. To end, the counsel for the applicant's prayed to adopt the applicant's affidavit and his reply to the respondents' joint counter affidavit to form part of his written submissions in chief of the aforesaid.

Having carefully painstaking the applicant's written submissions in chief, it appears to me, first, to determine whether the applicant has established sufficient cause(s) for this Court to extend time within which to file the intended appeal against the decision of the Registrar of Titles.

As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. Guidelines have been formulated by the Court of Appeal to that effect as stated in the famous case of **Lyamuya Construction Company Ltd vs. Board of**

Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010 (Unreported) at page 6 & 7

thus:-

- a) The applicant must account for all the period 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 that 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 the illegality of the decision sought to be challenged.*

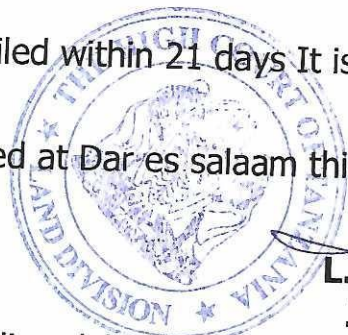
As it can be gleaned from the applicant's affidavit at paragraphs 11, 12, 13, 14, 16, 17, 19, 20, 21, 22 and 23, truth be told as a call of justice, the applicant has shown more than diligence in prosecuting his action that he intends to take. Yet again, the same being stoutly reiterated in his reply to respondents' joint counter affidavit at paragraphs 10, 11 and 12 thereat. Even the applicants' written submissions speak for themselves regarding diligence of the applicant.

Authority vs. Mohamed R. Mohamed [2003] TLR 76 it was held that:

"Admittedly, this Court has said in a number of decisions that time would be extended if there is an illegality to be ratified".

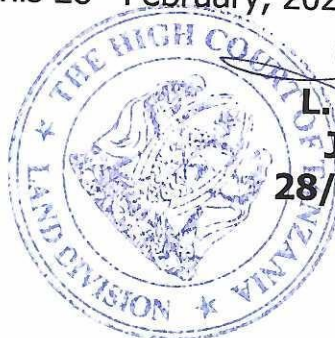
In the upshot, I must admit that, the applicant irrespective of being heard *ex parte*, has succeeded to convince this Court that there is a point of law of sufficient importance, involved in this application, to warrant the extension of time. It is from the above reasons, the application is meritorious and I proceed to grant it without costs. The intended appeal must be filed within 21 days It is so ordered.

Dated at Dar es salaam this 28th day of February, 2023.




L. HEMED
JUDGE

Court: Ruling delivered in the presence of Mr. Kiondo advocate of the applicants this 28th February, 2023.




L. HEMED
JUDGE
28/02/2023