

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO.709 OF 2022

*(Arising from Misc. Land case Application No. 302 of 2022, before the
High Court Land Division, by T. Mwenegoha J, dated 29th July 2022)*

HAMZA HAMAD MBOGO.....1ST APPLICANT

SAIDA ATHUMAN KIRUMBI.....2ND APPLICANT

SEMEN AMAN KESSY.....3RD APPLICANT

ELASA ATHUMAN KIRUMBI.....4TH APPLICANT

JUMA HEMED MALAPA.....5TH APPLICANT

VERSUS

LAZARO KANYARO.....1ST RESPONDENT

HEMED ATHUMAN.....2ND RESPONDENT

MLINDA JOHN.....3RD RESPONDENT

PIUS JULIUS.....4TH RESPONDENT

KABANGO GENERAL BUSINESS (T) LTD.....5TH RESPONDENT

EX-PARTE RULING

Date of Last Order: 06.03.2023

Date of Ruling: 27.03.2023

T.N. MWENEGOHA, J

The applicants are seeking for an order of extension of time so that they can lodge an Application for Review out of time, against the decision given in respect to Misc. Land Case Application No 302 of 2022. The Application was brought under section 93 of the Civil Procedure Code, Cap 33 R.E 2019. It was accompanied by the joint affidavit of all 5 applicants. The same was heard *ex parte* against the respondents, hence this Ruling.

Advocate Irene Felix Nambuo, submitting for the applicants, asserted that, the application has been preferred owing to the illegalities available on the impugned decision. Further, the applicant's delay was caused by their act of prosecuting the Misc. Land Application No. 509 of 2022. Therefore, under section 21(2) of the Law of Limitations Act, Cap 89 R.E 2019 the time used in prosecuting the said case should be exempted. To buttress her assertion, she cited the case of **Felix Tumbo Kissima versus Tanzania Telecommunication Co. Ltd and Another** (1997) TLR 57.

Having gone through the submissions of Ms. Nambuo counsel for the applicants, the affidavit and its annexure, the issue for determination is whether the application is meritorious or contra wise.

In essence, this Application in my settled opinion is devoid of merit. I find so because, even if this court allows it, the applicants they will not be able

to pursue their intended course as prayed in the present Chamber Application. My findings are based on the confusions associated with the Application at hand. So, to speak, it has come to my knowledge that based on the available records; the applicants are jumbled as to what remedy is available to them.

In their current Application the applicants have stated that, they are seeking an extension of time so as to file an Application for Review. They have used section 93 of the Civil Procedure Code, Cap 33 R.E 2019 as an enabling provision to move this Court. The said provision provides that; -

93. "Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired".

Despite, in their joint affidavit, it clearly shows that, they did apply to Review the impugned decision of this court *vide* Misc. Land Application No. 509 of 2022. The said application was withdrawn. Their attempt to restore the same was unsuccessfully for being time barred (see paragraph 5 and 6 of their Affidavit). Hence, they opted for the instant application.

Now, looking at the submissions by their learned counsel, she is on record saying that, the reasons for the applicants' delay to take their intended action (apply for Review) is the fact that, they were bona fide pursuing Misc. Land Application No. 509 of 2022. Unfortunately, their learned counsel submission in the premise was a blatant distortion of the truth. Thus, the aforesaid case to have been caused delay is actually Application for Review *i.e* Misc. Land Application No. 509 of 2022 of the same decision of this court, *vide* Misc. Land Case Application No. 302 of 2022.

In short, the applicants have already attempted to seek Review of the said impugned decision (Misc. Land Case Application No. 302 of 2022), *vide* Misc. Land Application No. 509 of 2022. The same was withdrawn upon the request of their learned advocate Bahati Miso, for the reasons available on the records (see annexure HSE3). That being the case, they cannot file a fresh Application for Review, owing to the circumstances I have shown here in above.

Basing on the above confusions, I see the reason why the instant application was preferred under section 93 of the Civil Procedure Code, Cap 33 R.E 2019 a very general provision with regard to extension of time, instead of a specific provision. It is obvious that, the applicants are unaware of the remedies if any, available to them given above explained

scenario. Because they have an advocate on their side, Ms. Irene Felix Nambuo, I leave this task to her to show them the right road to drive on. For the reasons stated, I proceed to dismiss the Application hereof. No order as to costs. It is so ordered.




T.N. MWENEGOHA
JUDGE
27/03/2023