

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

MISC. LAND APPLICATION NO. 806 OF 2022

(Arising from Kinondoni District Land and Housing Tribunal in Misc. Land Application No. 492 of 2022; Originating from Saranga Ward Tribunal in Application No. 38 of 2013)

JOSEPH MKIRAMWENIAPPLICANT

VERSUS

ACHING SARUNGI.....RESPONDENT

Date of Last Order: 02.03.2023
Date of Ruling: 20.03.2023

RULING

V.L. MAKANI, J

The applicant JOSEPH MKIRAMWENI is applying for extension of time within which to file application for revision against the decision of Kinondoni District Land and Housing Tribunal (the **District Tribunal**) in Misc. Land Application No.495 of 2020 (Hon. R. Mbilinyi). The application originated from Saranga Ward Tribunal (the **Ward Tribunal**).

The application is made under section 14(1) of the Law of Limitation Act, CAP 89 RE 2019 (the **Limitation Act**) and is supported by the affidavit of the applicant. The respondent opposed the application by filing a counter affidavit.

The application proceeded orally and Mr. Godfrey Silayo, Advocate represented the applicant, while Mr. Karilo M. Kerito, Advocate appeared for the respondent.

Mr. Silayo prayed to adopt the contents of the applicant's affidavit. He said among the grounds for extension of time is illegality. That the decision of the Ward Tribunal was reviewed by the District Tribunal but the review was on pretext of changing boundaries from 3 ½ feet to 3 metres. He said the District Tribunal did not hear the application for extension of time for review in respect of the Ward Tribunal's decision in Land Application No.38 of 2015. He said the decision of the District Tribunal at page 5 evidently shows that the District Tribunal did extend time and at the same time the District Tribunal adjudicated on the matter instead of the parties appearing before it to address the issue of review. He said the District Tribunal was not supposed to adjudicate two applications in one because in so doing, he said, the applicant was denied the right to be heard on the boundaries.

Counsel further said, the delay to bring this application was due to the fact that the applicant was not financially well, and he had already engaged another advocate to pursue revision against execution in land revision No.784 of 2021 (Before Hon. Mwenegoha, J). He said the decision of the District Tribunal is still on record and if it is not challenged the illegality would still be on record. This, he said, would deny the applicants the right to a fair hearing. He prayed for the application to be allowed.

In reply, Mr. Karilo said that respondent had previously instituted the application at the Ward Tribunal. He said there was an error on delivering the judgment, and that, instead of 3 metres it was reflected 3 feet and that was the source which led the respondent to apply for extension of time in Misc. Land application No.495 of 2020. That the said application was an omnibus application, that is, there was an application for extension of time and call to examine the records of the Ward Tribunal. That the matter proceeded by way of written submissions and the reasons for not awarding the applicant right to be heard is in paragraph 15 and on omnibus application on paragraph 17.

Counsel further submitted that the applicant was supposed to address the court for his delay to file application for revision in this court. That in the supporting affidavit there were no grounds for extension of time. That the impugned decision was delivered on 10/03/2021 and the applicant has filed this application on 12/12/2022. That it is more than 645 days and the applicant has not accounted for the delay. He relied on the case of **Lyamuya Construction Company Limited (supra) vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT-Arusha)** (unreported).

Mr. Kerito said the applicant alleged that he did not afford legal representation, but this is a baseless ground which has no legal stand because during all that time the applicant had legal representation of the current advocate. Further the applicant has not stated as to when he discovered the alleged illegality for the purpose of assessing the delay. He pointed out that the issues of financial constraint were not pleaded and so the applicant is bound by his pleadings. He relied on the case of **Yara Tanzania Ltd vs. Ikuwo Enterprises Ltd, Civil Appeal No. 309 of 2019 (CAT-DSM)** (unreported). He insisted that illegality is not on the face of the records as the law requires.

That there is no chance of applicant's success as the issue of boundaries has not been disputed throughout by the applicant.

In rejoinder, Mr. Silayo said the case of **Lyamuya's case** (supra) gives guidelines to the court for extension of time. He said the matter at the District Tribunal was omnibus and thus the applicant was denied right to be heard. That the applicant came to the knowledge to challenge the decision of the District Tribunal after the nullification of the proceedings. That the applicant was represented at the District Tribunal on execution and concentrated on the orders from the execution. He reiterated his prayers for the application to be granted.

I have listened to the rival submissions by the learned Advocates. The main issue for consideration is whether this application has merit.

It is trite law that extension of time is the discretion of the court. However, for the court to exercise such discretion, the applicant has the duty to place before the court sufficient reasons for the delay, so that the court can judiciously exercise such discretion. Among the

principles, though not exhaustive was stated in the case **Lyamuya Case** (supra), where the Court of Appeal outlined the following four factors to be considered:

- (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 existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

In the present application, the main reasons for the delay in filing the application for revision are contained in paragraphs 15, 16 and 18 of the applicant's affidavit. That the applicant was not afforded right to be heard in Misc. application No.495 of 2022 as it was an omnibus application hence illegality. Further in paragraph 18 the applicant alleged that he was not able to engage an advocate.

Perusal of the records in this application has revealed that ruling in Misc. Land application No.495 of 2020 which the applicant is complaining about was delivered on 10/03/2021. The certified copies of the ruling and order were ready for collection on 30/03/2021. This application for extension of time has been filed on 13/12/2022. This

is about 21 months from when the applicant became aware of the alleged illegality in Misc. Land application No.495 of 2020. The period of 21 months delay has not been accounted for by the applicant. This, goes against the requirement in **Lyamuya's case** (supra) which requires the applicant to account for every single day of delay. The said case also requires that the delay must not be inordinate, as said the delay is for 21 months and this, in my view, is inordinate. The applicant has therefore failed to account for the delay to warrant extension of time.

The applicant also argued that he was financially unable to engage an advocate. This argument cannot hold water, considering the length of the delay of 21 months. In any case there are Legal Aid centres who have been assisting genuine people who are met with such situation. The applicant was not vigilant enough to seek legal representation. This argument has no merit, and it is dismissed.

The applicant alleged illegality. Indeed, an alleged illegality must be apparent on the face of the record. Once it is established that the illegality in the impugned decision is clearly visible on the face of

record, then it can be termed as a sufficient cause to warrant extension of time (see the case of **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported). In the present application the illegality alleged is not quite apparent. If we are to question the illegality in Application No.495 of 2020 it would entail going to the other matters subsequent to this case including Misc. Land Application No. 784 of 2021 and Land Revision No. 50 of 2021 whose records are not here. And where a party starts to dig for facts to justify illegality then the said illegality cannot be said to be apparent on the face of the record. In that regard, this ground cannot be taken to be a reason for the delay to warrant extension of time.

It is for the reasons elucidated above that I find this application devoid of merit, and it is hereby dismissed with costs.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
20/03/2023