

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

MISC. LAND APPLICATION NO. 709 OF 2022

*(Arising from Misc. Land case Application No. 302 of 2022, before the High Court
Land Division, by T. N. 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 otherwise.

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 this, their joint affidavit 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 is not correct. The case responsible for 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 again.

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.

In essence, this Application is devoid of merit. I find so because even if this Court allows it, the applicants will not be able to pursue their intended Course as prayed in the present Chamber Application.

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