

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 160 OF 2023**

**(Originating from Land Application No. 398 of 2016 from the District Land and Housing Tribunal for Kinondoni at Mwananyamala)**

**SERA JOEL KABIGI.....APPLICANT**

**VERSUS**

**ANDREW FRANCIS KAMBONA.....1<sup>ST</sup> RESPONDENT**

**AGNES KABIGI MKENDE.....2<sup>ND</sup> RESPONDENT**

**DORICA KABIGI.....3<sup>RD</sup> RESPONDENT**

**JACOB KABIGI.....4<sup>TH</sup> RESPONDENT**

**RULING**

*29/05/2023 & 31/05/2023*

**A. MSAFIRI, J**

In this matter, the applicant has moved this Court to extend time within which to file Application for Revision in respect to Land Application No. 398 of 2016 before the District Land and Housing Tribunal for Kinondoni at Mwananyamala [Hon. Mlyambina, Y.J-Chairman, as he then

*Alls*

was]. The same is broached in under Section 14 of the Law of Limitation Act, [Cap 89 R.E 2019] and any other enabling provisions of the law.

The application is supported by the affidavit sworn by the applicant herself filed on 27<sup>th</sup> March, 2023. On the other hand, it was contested *vide* the counter affidavit of the 1<sup>st</sup> respondent himself which was filed on 18<sup>th</sup> April, 2023 whereas the 2<sup>nd</sup> and 3<sup>rd</sup> respondents did not object the application and the 4<sup>th</sup> respondent did not appear despite being served with summons and acknowledged receipt. By the consent of this Court dated 3<sup>rd</sup> May, 2023 parties were directed to argue the application by way of written submissions whereby they complied forthwith.


With regard to this Ruling, I am not aiming to replicate the entire submissions as argued by the counsels for parties as the same will be referred in the due course of determining the instant matter. In consideration, this Court had an ample time to analyse their submissions for and against filed before the Court.

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 of Tanzania to that effect as developed

*Alle.*

in the renowned 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 of the Ruling of the Court 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; and*
- 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.*

It is noteworthy to point out that, going through the applicant's affidavit as whole there is no any plausible reason(s) implored thereof to account for the delay in respect of Land Application No. 398 of 2016 which was delivered on 8<sup>th</sup> December, 2017 by [Hon. Mlyambina, Y.J-Chairman, as he then was] to 19<sup>th</sup> March, 2023 when she came across notice of attachment of the disputed land from Kabango General Business (T)  Limited.

It was succinctly stated in the case of **MPS Oil Tanzania Limited & 2 Others vs. Citi Bank Tanzania Limited**, Civil Application No. 4 of 2016, and principled that: -

*"...In an application for extension of time, the position of this Court has consistently been to the effect that the applicant has to account for every day of the delay".*

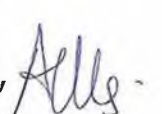
More so, in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Appeal No. 3 of 2007, (Unreported) it was observed and held that: -

*"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 has to be taken".*

In the circumstances, the applicant ought to have accounted for each day of delay since 8<sup>th</sup> December, 2017 when the decision in Land Application No. 398 of 2016 was delivered to 19<sup>th</sup> March, 2023 when she became acquainted with the notice from the Court broker, arithmetically 1,873 days are unaccounted for. Hence, the delay was extremely inordinate and absolute negligence on the part of the applicant and not contra wise.

*Alle.*


On that note, I join hands with Mr. John Mponela that the sixty (60) days allowable by law to file Revision elapsed on the 6<sup>th</sup> February, 2018 and in that regard the applicant was duty bound to account for each day of the delay subsequently but instead she prayed that the time from when the Decree was pronounced to the time when she purportedly became cognizant of the existence of the said Decree be excluded which to me is unprecedented.

The case of **Jackline Ntuyubaliwe Mengi & Others vs. Abdiel Reginald Mengi and Benjamin Abraham Mengi & Another**, Civil Revision No. 1 of 2022, (HCT-TMK), (Unreported) and the decision of **Recho Joshu vs. Charles Yongole & Another**, Misc. Civil Application No. 164 of 2020, (Unreported), with due respect they are all persuasive before this Court. Furthermore, the later is distinguishable with the present matter as there is no any technical issue which hindered the applicant to file the application for revision in time given the fact that the 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> respondents are issues of the late Joel P. Kabigi whom presumably ought to share information about the suit land which was the subject before the trial Tribunal and that's why they did not contest the application of their young sister. Needless to say, the case of **Murtaza Mohamed Raza Virani & Another vs. Mehboob Hassanali Versi**, 



Civil Application No. 448/01 of 2019, (CAT-DSM), (Unreported) is distinguishable to the matter at hand.

Regarding the ground of illegalities, it has been held in plethora of cases that, where illegality exists and pleaded as a ground, the same constitutes sufficient cause for enlargement of time as illustrated in the case of **Lyamuya Construction Company Ltd** (*supra*) which with approval cited the case of **The Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia [1992] TLR 387** to that effect. In the instantaneous application, the issue of illegality has no place to stand hereof as the 1<sup>st</sup> respondent was the administrator of the estate of his late father Mohamed William Kambona and the 4<sup>th</sup> respondent was the administrator of the estate of the late Joel Peter Kabigi (see annexure SERA-1 and SERA-2 of the affidavit). I must therefore conclude that, the applicant has also failed to convince this Court that, there is a point of law sufficient importance, involved in this application, to warrant an extension of time.

I find it apt and apposite to refer the case of **Magnet Construction Limited vs. Bruce Wallace Jones**, Civil Appeal No. 459 of 2020, (CAT-MUSOMA), (Unreported), at page 12 of the Judgment of the Court which  amplified that: -

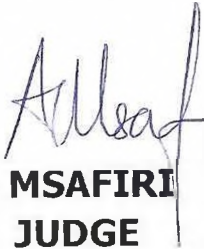
*"...In the circumstance of what was placed before the High Court, we subscribe to the decision of the Court in Tanzania Harbours Authority vs. Mohamed R. Mohamed [2003] TLR 76 that **time will not be extended in every situation whenever illegality is alleged as an issue by the applicant. It all depends on the circumstances of each case and the material placed before the Court**".*

(Emphasis added).

From the foregone, the applicant has failed to establish sufficient cause(s) to have this Court exercise its discretion judiciously in granting the application. In the end, the application is dismissed for want of merit. Parties shall bear their own respective costs.

Order accordingly.

**Dated at Dar es Salaam this 31<sup>st</sup> day of May, 2023.**

  
**A. MSAFIRI**  
**JUDGE**  
**31/5/2023**

