

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

**MISC. LAND CASE APPLICATION NO.85 OF 2022**

*{Arising from Misc. Land Application No.779 of 2021, by Kinondoni  
District Land and Housing Tribunal}*

**ABDALLAH JUMA HENRY (Administrator of the Estate of Hassan  
Henry).....APPLICANT**

**VERSUS**

**JULLYAN MMARY.....RESPONDENT**

**RULING**

*Date of Last Order: 08.05.2023*

*Date of Ruling: 28.06.2023*

**T.N. MWENEGOHA, J**

The applicant is seeking for an order of extension of time so that he can lodge an Application for Revision out of time, against the decision of the District Land and Housing Tribunal for Kinondoni District, vide Misc. Land Application No.779 of 2021, dated 03<sup>rd</sup> June, 2022. The Application was brought under **Section 41(2) of the Land Disputes Courts Act, Cap 216, R.E 2019 and Section 14(1) of the Law of Limitations Act, Cap 89, R.E 2019**. It was accompanied by the affidavit of the applicant himself, Abdallah Juma Henry. The same was heard by way of written submissions.

Advocate Caroline Mumba appeared for the applicant and the respondent was represented by Advocate Seni S. Malimi.

After praying the applicant's affidavit to be adopted and form part of her submissions, Advocate Mumba insisted that, the applicant's delay to take the intended course is justifiable as he was prosecuting his appeal against the impugned decision, vide Land Appeal No. 187/ 2022. The same was struck out by this Court. That, fact constitutes a sufficient cause as stated in **Fortunatus Masha versus William Shija (1997) TLR 154.**

Secondly, the impugned decision is tainted with illegalities. That Trial Tribunal reopened the matter while it was functus officio. Further, the dispute was not determined on the basis of the issues framed. Hence, these illegalities can only be dealt with by Revision if this Application is allowed. She argued that Illegality in the impugned decision constitutes a sufficient course capable of allowing the Application at hand, as given in **Principal Secretary Ministry of Defence & National Service versus Devram Valambhia (1993) TLR 185**

In reply, Advocate Malimi for the respondent, was of the view that, the applicant has not provided any sufficient cause warranting her Application to be allowed. That, after all the applicant failed to account for each day of delay from the date when the impugned decision was delivered up to the date of filing this application which amounts to 265 days. That, the fact that the applicant filed an appeal instead of an Application for revision cannot justify allowing this Application. It is the negligence of the applicant's counsel, not knowing the appropriate remedy to pursue. He referred to the case of **A.H Muhimbira and Others versus John K. Mwanguku, Civil Application No. 13 of 2005.**

As for illegality to constitute a sufficient cause he argues that, the same must be apparent on face of records. It should not require long drawn

arguments to be marked. That, in this case, the complained illegalities were not disclosed by the applicant's counsel, hence this ground cannot constitute a sufficient cause as stated in **KCB Bank Tanzania Limited versus Sara Joel Mahanyu, Misc. Land Case Application No. 30 of 2021, High Court of Tanzania at Arusha.**

In her brief rejoinder, the applicant's counsel reiterated her submissions in chief and insisted for the Application to be allowed.

Having heard the arguments of the parties and also gone through the affidavit in support of the Application and the counter affidavits from the respondents, the issue for determination is whether the Application has merits or not. Two grounds for allowing this Application were advanced by the applicant's counsel in her submissions in chief.

Firstly it was that, the delay was caused by the fact that, the applicant spent his time pursuing the appeal which was before this Court. In his affidavit, the applicant annexed a copy of the judgment by Mgeyekwa J, dated 14<sup>th</sup> February, 2023, given in Misc. Land Appeal No. 187 of 2022. The same was struck out for two reasons, namely being instituted by the applicant in his personal capacity instead of filing the same as a legal representative of the deceased estate (Juma Hassan Henry). The other reason was that, the appeal originated from a non-appealable order. In that particular case, the applicant was enjoying the legal services of Advocate Godfrey Namoto.

Looking at this fact, it is without doubt that, the applicant was not idle in pursuing his intended actions at all. He acted diligently against the impugned decision of the Trial Tribunal, only to be let down by his trust to the Advocate instructed to act on his behalf. The rules are settled as to

this fact, a person should not be punished by mistakes or negligence of his Advocate, see **Samwel Munsiro versus Chacha Mwikambwe, Civil Application No. 539/08 of 2019, Court of Appeal of Tanzania, at Mwanza, (unreported)**, which cited in approval the case of **Regional Manager Tanroads Kagera versus Ruaha Concrete Company Limited, Civil Application no. 99 of 2007 (unreported)**.

Therefore, this reason in my opinion is sufficient to enlarge the time for the applicant to lodge his intended Application. For these findings, I will discuss the second ground (illegality) given by the applicant as a reason for preferring the instant case. The findings in the 1<sup>st</sup> ground are capable of discharging the entire Application to its finality.

In the upshot, the application is allowed with no order as to costs.

  
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**T.N. Mwenegoha.**

**Judge**

**28/06/2023**

