

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO.150 OF 2023**

*{Arising from Land Case No.135 of 2012, by Temeke District Land and  
Housing Tribunal}*

**NAIMA S MKWANYE.....APPLICANT**

**VERSUS**

**AMIR IDRISA KOMBA.....1<sup>ST</sup> RESPONDENT**

**ABDALLAH SALUM KIMBUKWA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of Last Order: 23.05.2023*

*Date of Ruling: 26.06.2023*

**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 Temeke District, vide Land Case No.135 of 2012, dated 16<sup>th</sup> January, 2017. The Application was brought under **section 14(1) of the Law of Limitations Act, Cap 89, R.E 2019**. It was accompanied by the affidavit of the applicant himself, Naima S Mkwanye. The same was heard by way of written submissions.

Advocate Fredrick J Ododa appeared for the applicant, the 1<sup>st</sup> respondent was represented by Advocate Ibrahim J. Kimwaga, while the 2<sup>nd</sup> respondent appeared in person.

Mr. Ododa, for the applicant, after praying the applicant's affidavit to be adopted and form part of his submissions, insisted that, there are two reasons that made the applicant file the instant Application. The first reason is that, the applicant's legal right need to be protected. That, she was not aware of the existence of the impugned decision before the District Land and Housing Tribunal for Temeke. That, the said decision contains illegalities in need of this Court's attention.

He argued that she was not She wasn't even served the summons to appear before the said tribunal. She came to know of the existence of this case upon being supplied with the notice to demolish the suit property. The applicant's counsel referred the Court to **Article 13(6) of the Constitution of the United Republic of Tanzania of 1977** and also the case of **Hashi Energy (T) Limited versus Khamis Maganga, Civil Appeal No. 200/16 of 2020, Court of Appeal of Tanzania, (unreported)**

The 2<sup>nd</sup> reason advanced by Mr. Ododa is that, the applicant acted diligently. That, after she was served with the notice to demolish the wall that is when she discovered that there was a trial before the tribunal, involving the 1<sup>st</sup> and the 2<sup>nd</sup> respondents alone. Then she acted on the only remedy available to the applicant which is Revisions as stated in **Jacqueline Ntuyabaliwe & 2 Others versus Reginald Mengi & Benjamin Abraham Mengi (Administrators of the Estate of the Late Reginald Abraham Mengi), High Court of Tanzania at Temeke High Court Sub Registry(unreported).**

In reply, Advocate Kimwaga for the 1<sup>st</sup> respondent, was of the view that, the applicant has not provided any sufficient cause warranting her

Application to be allowed. After all the applicant failed to account for each day of delay from the date when the impugned decision was delivered in 2017. He further argued that, above all, the case to which Revision is sought was prosecuted by the applicant's husband for about five years and the applicant was the one receiving Court summons, therefore she cannot say at this point that she was not aware of the existence of Land case No. 135 of 2012. These arguments were well supported by the 2<sup>nd</sup> respondent who prayed the application at hand be dismissed for being devoid of merits.

In his brief rejoinder, the applicant's counsel reiterated his 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.

In this application, the duty of the applicant was to give reasons as to why she failed to take the intended actions within time. What exactly barred her from filing the intended Revision within the prescribed time. The reasons are supposed to be convincing enough to enable the Court exercise its discretionary powers according in favor of the applicant. In my opinion, the applicant has failed in giving the reasons for her delay. She claimed to have a constitutional right to be heard through Revision and that without allowing this Application the said right will be curtailed. That, she was not aware that Land Case No 135 of 2012 existed before the trial tribunal, up to 2021 when she was given a notice to vacate the premises. She filed a Misc. Land Application No. 480/2021 seeking to

revise the impugned decision, but she later realized that the Trial Tribunal cannot revise its own decision, hence this Application. However, in the above narration of event given for the applicant, they still failed to account for time so as to be granted extension. The applicant's counsel did not even say in his submissions as to when exactly the applicant discovered that she is pursuing a wrong remedy in a wrong Court. Therefore, I find these reasons to be insufficient to allow this Application see **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD, Court of Appeal of Tanzania, Civil Application No. 13 of 2010 (Mwanza Registry, (unreported)** and **Victoria Real Estate Development Ltd versus Tanzania Investment Bank and Others, Civil Application No. 225 of 2014, Court of Appeal of Tanzania at Dar Es Salaam (unreported).**

The applicant, she was duty bound to account for all the days she delayed in taking her intended course. In this part, the applicant also failed to give a detailed account of the days she delayed in taking her intended course. She just insisted to be allowed to file a Revision because she was not party to the Land Case No. 135.2012, but that argument does not fit in the Application at hand. Therefore, I find the entire Application to be devoid of merits.

And to rest the same, I dismiss it accordingly with costs.

  
T.N. Mwenegoha

Judge

26/06/2023

