

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

MISC LAND APPLICATION NO. 261 OF 2023

(Arising from Misc. Land Application No. 693 of 2017 Kinondoni
District Land and Housing Tribunal)

DANIEL R. DEMBE.....APPLICANT

VERSUS

MR & MRS PIUS ANDEREA KISHOSHA.....1ST RESPONDENT

GENES G. GABRIEL.....2ND RESPONDENT

GAYLE G. GENEYA.....3RD RESPONDENT

RULING

10th to 12th July, 2023

E.B. LUVANDA, J

This application is made under the enabling provision of section 14 of the Law of Limitation Act, Cap 89 R. E. 2019, where the Applicant named above is asking for extension of time to file an application for revision in respect of a ruling in Misc. Application No. 693 of 2019 dated 18/10/2019. In the affidavit in support of the application, the Applicant said he was surprised on seeing eviction notice attached on his house Applicant and later discovered there is an order which was issued on 18/10/2019. The Applicant stated to have preferred objection proceedings via Misc. Application No. 13/2022

which was dismissed (sic, struck out) by the trial tribunal sua motto (sic, suo moto), on explanation that the Applicant was a party to the suit. Three, the Applicant grounded that the impugned order dated 18/10/2019 is tainted with irregularities on that he was decreed by the same tribunal to be the lawful owner of the suit house, arguing that the order of sale of the suit house does not tally completely with the decree of the tribunal.

In the counter affidavit, the first Respondent stated that the Applicant was a party to the suit (consolidated applications) and issues framed were concerning the same suit property, therefore the Applicant improperly moved the trial tribunal by way of objection proceedings. That they were selling the said house as per the tribunal decree which ordered the share of Gayle G. Geneya in the suit property to be set off to reimburse the first Respondent a total sum of Tshs 30,000,000/=, hence the order for attachment and sell. That there were no illegalities whatsoever which could be challenged by the Applicant, and he stayed cool since 2019 and five years lapsed since the said order of sale was issued. That the Applicant failed to account for the days of delay from 18/10/2019 to date as required by law.

This application proceeded *ex parte* against the second and third Respondents.

Mr. Richard Mbuli learned Advocate for Applicant submitted that in 2019 the first Respondent decided to execute the decree in consolidated Applications via Misc. Application No. 693 of 2017 which the Applicant was not aware until when Ms. Adili Auction Mart initiated the process of eviction. He submitted that the Applicant never stayed idle, he instituted Misc. Application No. 13 of 2022 objecting sale of the suit premises, which was dismissed on technical ground. The learned Counsel submitted that Misc. Application No. 693 of 20177 is tainted with irregularities, the Applicant was declared a lawful owner on the same decree which in execution the tribunal is trying to deprive his right. He submitted that the right to be heard is fundamental. He cited the case of **Abas Sherally & Another vs. Abdul Haji Mohamed Fazalboy**, Civil Application No. 33 of 2022. He submitted that what is executed is Misc. Application No. 693 of 2017 is not what was ordered in the decree of consolidated Applications No. 191/2008 and 96/2010, provided for the third Respondent and second Respondent herein to re – imburse the first Respondent a purchasing price and costs incurred to finish the house, share of the third Respondent be used to set off to reimburse the first Respondent. He submitted that the third Respondent who was the lover of the Applicant her share is unknown for it to be set off, and to set off it did not mean to sale the house, that is why the tribunal ordered

the first Respondent to vacate after being paid, but they prematurely vacated for reasons known to themselves. He submitted that it is settled principle that irregularity is the good reason for extension of time regardless of not counting each day of delay. That a fact that the Applicant was not heard, execution does not tally decree in consolidated Applications No. 191 of 2008 and 96 of 2010, are sufficient ground for extension of time.

In opposition, Bahati Byajirali Makamba learned Counsel for first Respondent submitted that the Applicant failed to account more than 806 days from the date when the ruling was delivered on 18/10/2019 to the date when he become aware, although did not make clear the exact date he become aware on existence of the executing order. He submitted that the Applicant miserably failed to account delay of 274 days from the date the ruling in Misc. Application No. 13 of 2022 was delivered on 04/08/2022 to the date of filing this application. He submitted that there is no evidence that the Applicant was waiting copy of the ruling, as his affidavit is silent. He cited the case of **Lyamuya Construction Company Ltd vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2/2010, CAT. Arusha, for a proposition that the Applicant failed to account for each day of delay. He submitted that the Applicant has not acted with due diligence, rather he negligently filed objection proceeding instead

of filing revision. He cited the case of **Inspector Sadiki and Others vs. Gerald Nkya**, 1997 TLR 290 (C.A.T). He submitted that the Applicant pleaded ignorance of law, which in law is not a good cause for extension of time. He cited the case of **Godfrey Anthony and Another vs Republic**, Criminal Application No. 6/2008, **Emilio Mpelembe @ Songambe vs. Republic**, Criminal Application No. 18 of 2018, **Emmanuel Lohay & Another vs. Republic**, Criminal Application No. 3/2013. He submitted that factual materials must be there for the grant of an application for extension. He cited the case of **Dawi Akko vs. Petro Ingi & Two Others**, Misc. Civil Application No. 31/2018 HC Arusha. He submitted that a delay of even a single day has to be accounted for, citing **Vieltel Tanzania Limited vs. ASA General Suppliers & Construction Co. Ltd**, Civil Application No. 126 of 2021 (2022) TZCA 14. Also cited **Fatuma Ally Hakim & Others vs. Ahmad Selemani (legal Representative of Kalasi Hakim Ally, Deceased)**, PC Civil Appeal No. 9 of 2022, HC Songea, for a proposition that illegality should not be invoked as a shield in apparent inaction and laxity.

On rejoinder, the learned Counsel for Applicant reiterated that the Applicant was not aware of the said application for execution and he was never made a party, only became aware when he was served with eviction notice from

Adili Auction Mart and the Applicant did not stay idle rather filed Application No. 13 of 2022 to object attachment. He cited the case of **The Attorney General vs. Emmanuel Malangakis**, Civil Application No. 138 of 2019, for a proposition that irregularity is a good cause for extension of time even if the Applicant failed to account for each day of delay.

The main grounds upon which this application is grounded are three: the Applicant was not aware of the impugned order dated 18/10/2019; he was busy prosecuting Misc. Application No. 13 of 2022 pertaining to objection proceedings; illegalities on the impugned order dated 18/10/2019. It is to be noted that when the Applicant was pleading his astonishment to the notice of eviction, affixed to his house did not say as to when exactly a notice was affixed to the impugned house, nor said as to when he conducted the alleged investigation and discovery of the order of the trial tribunal dated 18/10/2019 in Misc. Application No. 693 of 2019. Basically the statement of the Applicant were vague and open ended.

Assuming that the Applicant became aware of the order dated 18/10/2019 upon seeing affixation of a notice of eviction, and assuming that the Applicant from the date of discovery of the order dated 18/10/2019 presumably in 2022, he was busy prosecuting an application Misc. Application No. 13/2022 which was struck out on 04/08/2022, even if the

time from delivery of the impugned order on 18/10/2019 to 04/08/2022 when Misc. Application No. 13 of 2022 met its eventuality, is excluded still the Applicant is caught in the web of uncounted delay of more than six months or eight months counting from the date of striking out Misc. Application No. 13 of 2022 on 04/08/2022 to the date when this application was lodged in the system on 01/02/2023 or formerly filed and fees paid on 05/05/2023. There is no tenable explanation as to why the Applicant remained idle after his objection proceedings was struck out on 04/08/2022. The Applicant did not take any steps to challenge the verdict dated 04/08/2022 nor order dated 18/10/2019, until after expiry of six months, it is when he lodged this application electronically on 01/02/2023, and remained idle up to 05/05/2023 when he paid for a filing fees. As alluded by the learned Counsel for first Respondent that there is no indication or evidence that the Applicant was awaiting for the copy of the ruling for it to be said was a cause of delay. Instead of accounting for delay, the Applicant rushed to plead illegality and in his submission and rejoinder the learned Counsel for the Applicant stressed by relying on the argument that a principle is settled irregularity is the good reason for extension of time regardless of not accounting each day of delay.

In the case of **Fatuma Ally Hakim** (supra) when I was dealing with a situation akin to this case, at page 7 when I was echoing on reflection of principles governing extension of time invented in **Lyamuya** (supra), I expressed the danger for a litigant who rely on the ground of illegality as a shield and solo ground for extension, of time, I quote

"Unfortunate, litigants ignore the preceding condition precedent for extension, instead lean or incline on a last option which depend on the feeling of the court on whether such illegality exist and if is there, whether is worthy point of law such importance in furtherance of administration of justice"

Herein, the Applicant alleged that one of the illegality is that an impugned order for execution by way of sell of the house does not tally with a decree of the same tribunal which declared the Applicant a lawful owner of a suit house. Certainly true that in a consolidated Applications No. 191/2008 and 96/2010, the trial tribunal decreed Applicant herein and his lover (second Respondent herein) as lawful owners of a suit plot No. 36/125 Kawe Ukwamani Area, Kinondoni. By way of a counter claim, the Applicant and second Respondent were ordered to re – imburse the first Respondent herein a purchase price (Tsh 30,000,000) plus costs incurred to finish the semi finished house in the suit plot. Thereafter the

trial tribunal made a clawback clause and encumbered the suit house, by interweaving or tying the suit house to the order for refund, by ordering share of the first Respondent herein, in the suit premises to be set off to reimburse the first Respondent herein. Therefore to say the order for execution by way of attaching and selling the disputed house made via Misc. Application No. 693 of 2017, is tainted with illegalities or do not tally what was decreed in consolidated Applications No. 191 of 2008 and 96 of 2010, is novel and misplaced idea.

Another illegality pointed out by the learned Counsel for Applicant is that share of the third Respondent herein decreed to be set off in furtherance of refunding the first Respondent herein is unknown, this argument is also unfounded. This is because the question of refund by way of set off and shares in the disputed house were made in a decree for consolidated Applications No. 191 of 2008 and 96 of 2010, which the Applicant herein was happy and satisfied with the manner it was decreed, and never challenged it to date. In short, the question of refund, set off and shares, has nothing to do with the impugned order dated 18/10/2019, subject of this application for extension and the intended revision.

With all that said, the question of illegalities does not exist in the impugned order.

The Applicant failed to demonstrate on good cause (account for belatement) and grounds for extending time.

The application is dismissed with costs.

E.B. LUVANDA
JUDGE
12/07/2023

