

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.270 OF 2023

MADANIO IBRAHIM SAIDI (an administrator of the estates

of the late Halima Othman Sadan APPLICANT

VERSUS

REGISTRAR OF TITLES1ST RESPONDENT

ASSISTANT COMMISSIONER FOR LANDS,

DAR ES SALAAM ZONE 2ND RESPONDENT

HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING

Date of last order: 27/6/2023

Date of Ruling: 13/7/2023

A. MSAFIRI, J.

By chamber summons taken under Section 102(1) of the Land Registration Act, Cap 334 R.E 2019 Act, Section 2(1), 2(2) and 2(3) of the Judicature and Application of Laws Act, Cap 358 R.E 2019 and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019, the applicant instituted this application against respondents, seeking for the following *Orders* orders: -

1. That this Honorable Court be pleased to extend time within which the applicant to give to the Registrar and to the High Court notice of intention to appeal against the decision of the Registrar of Titles and Assist Commission (sic) for Lands made on the 30th November 2021.
2. That this Honourable Court be pleased to admit an appeal against the decision of the Registrar of Titles and the Assistant Commissioner for Lands made on the 30th November 2021.
3. Costs of the Application be provided for.

The chamber application has been taken at the instance of Ngole & Associates Law Chamber and is supported by the affidavit affirmed by the applicant. The respondents opposed the application by filing counter affidavit sworn by Joanitha Kazinja, the Land Officer employed by the 1st respondent.

The applicant proceeded *viva voce*, where the applicant was represented by Mr. Mashaka Ngole, learned advocate and the respondents enjoyed the services of Ms. Frida Mollel, learned State Attorney.

Mr. Mashaka prayed to adopt the contents of the affidavit of the applicant to support his submissions and contended that, the Registrar *Adelle*.

of Titles' decision was on 30/11/2021. During that time the registered owner one Halima Othman Sadan was deceased, hence she did not know about the rectification of her registration of ownership.

He stated that, the information on the rectification was discovered on 07/3/2022 by the applicant before he was appointed to be the administrator of the deceased estate, hence he could not do anything, either to issue notice or file an appeal until he could be appointed by the court as an administrator.

He submitted further that, it is not disputed by both parties that the applicant is an administrator of the estate of Halima Othman Sadan and was officially appointed on 17/6/2022 as per paragraph 7 of the affidavit.

That, immediately after his appointment, he wrote a letter to the Registrar of Titles requesting for a copy of Registrar of Titles' decision as per Section 101 of the Land Registration Act but it was until 03/5/2023 when he received the said decision upon the court's order to the Registrar of Titles.

The counsel for the applicant argued that, after having got the decision, the applicant filed an application under section 102 of the Land Registration Act for extension of time. *Adle-*

He submitted that the owner of the property was not afforded a right to be heard because she was deceased, and that, there was no proof that the owner was issued with a notice of rectification from the Registrar of Titles.

He contended that, the decision was issued on 30/11/2021, the applicant could not lodge a notice of intention to appeal, since he was already out of time.

He further referred this Court to the case of **Rafikihawa Mohamed Sadick vs The Registrar of Titles & Others**, Land Appeal No.15 of 2020 HC DSM Registry (Unreported) at Pg.10 and pray that both prayers be granted.

In reply, Ms. Mollel objected the application and submitted that, in this application, the applicant has to satisfy this court that: -

- Whether he has accounted for the whole period of delay,
- The delay is not inordinate,
- The applicant show diligence not apathy, negligence or slowness on the action he intends to take,
- Whether there is sufficient good cause for grant of extension.

She contended that, the applicant has failed to show sufficient good

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cause for an extension of time.

On the reason that the applicant was waiting for a letter of appointment of administrator of the estate of Halima Sadan Othman, she averred that the initial owner of the rectified plot was **Halima Othman Sadan** and not **Halima Sadani Othmani**.

She referred to paragraph 6 of the counter affidavit that after rectification, the Registrar of Titles informed Halima Othman Sadan by the letter of 30/12/2021 via her P.O Box 2959, Dar es Salaam, about the rectification and issued 14 days for Halima to return the Title and 30 days for her to appeal if she so wishes.

She argued that, at all that time no one came around to inform the Registrar of Titles that Halima was dead or to object the rectification. She averred that the applicant has failed to account for each day of delay. To bolster her submissions she cited the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha (unreported) and stated that the applicant has shown negligence as he had the disputed decision.

In a brief rejoinder, Mr. Ngole reiterated his submissions in chief and submitted that, Halima died since the year 2012 and the notice was

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issued in 2021, therefore it could not be received by Halima. He stated further that, there is no evidence that the letter was posted.

The counsel for the respondents contended that, the notice issued had a title of declaration, which was deponed by the Commissioner for Lands and not Registrar of Titles which they believe it was not a decision. Now a declaration is a decision because it has been supplied by the order of the court from the Registrar of Titles/ Commissioner for Land.

On account for delay, the counsel for the applicant submitted that all the facts reveals that they have clearly accounted for each day of delay. Further, he submitted that the applicant was not afforded a right to be heard.

Having considered the chamber summons and its supporting affidavit, the affidavit in reply and the oral submissions made by both learned counsel for the parties, the issue that has to be resolved is whether the application has merits.

The Court has discretionary power to grant an extension of time if there are sufficient reasons and good cause to warrant it to exercise that discretion. However, that discretion is judicial, and so it must be exercised judiciously. In the case of **Lyamuya Construction Company Ltd (supra)**, the following guidelines were formulated in *Atle*.

granting extension of time: -

- (a) The applicant must account for all 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.
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of sufficient importance; such as the illegality of the decision sought to be challenged.

As to the requirement of accounting for each day of delay, the case of **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No.3 of 2007, CAT (Unreported) has stressed 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 must be taken.

Having gone through the records, it is revealed that, a declaration in support of a rectification in the Land Register was made on 30th November, 2021. The applicant received the copy of the rectification via his advocate on 5th May, 2023. Having obtained the said copy, he filed this application on 10th May, 2023.

By considering that the applicant immediately filed this application after *Adde.*

he received the copy the declaration, I enjoin with the counsel for the applicant that the applicant has accounted for each day of delay.

Coming to the ground of illegality. The test of illegality was enunciated by the Court of Appeal in **Lyamuya Construction Co. Ltd (supra)**, where it was held that; -

"The Court there emphasized that such point of law must be that of sufficient importance, and I would add that it must also be apparent on the face of the record, such as the question of Jurisdiction, not one that would be discovered by a drawn argument or process"

The counsel for the applicant submitted that the applicant was not afforded the right to be heard. Having gone through the records, I am persuaded by the ground of illegality raised by the applicant. The reason being that the claimed illegality is apparent on the face of the record and does not require a drawn argument or process to be discovered.

Consequently, it behooves to find that the applicant has met the requirements to warrant this court to exercise its discretion to grant an extension of time.

As to the applicant's prayer for this Court to admit an appeal against the decision of the Registrar of Titles and the Commissioner for Lands, it is *Acute.*

my firm view that his prayer is premature before this Court. The applicant has first to lodge notice of appeal before this Court and to the Registrar of Titles as per Section 102(1) (a) of the Land Registration Act.

In the foregoing, I proceed to grant the applicant leave to lodge his notice of appeal within 14 days from the date of this Ruling.

Costs shall follow the cause.

It is so ordered.


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 **A. MSAFIRI**
JUDGE
13/7/2023