

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

**MISC. LAND APPLICATION NO. 405 OF 2023**

(Originating from Land Appeal No. 91/2021, Kibaha District Land & Housing Tribunal)

**ANNANKIRA W. MAKERE.....APPLICANT**

***VERSUS***

**JEREMIA MOSHI.....RESPONDENT**

**RULING**

11-15 August, 2023

**E.B. LUVANDA, J**

The Applicant above named filed this application moving this court for an order that: One, this court be pleased to grant the Applicant leave to file an application for revision out of time against the judgment of the Kibaha District Land and Housing Tribunal dated 19/09/2022.

The reason for delay is contained in the affidavit in support of the application, being due to misinformation on the dates; the Applicant travelled outside the country; chances of success and illegality.

In the counter affidavit, the Respondent stated that the advocates were aware of the dates for judgment and it was scheduled in the presence of both parties.

Mr. David Rwegasira learned Advocate for Applicant abandoned the ground for delay, instead submitted in respect of illegality. The learned Counsel submitted that the Chairman failed to take into consideration all written submission by the Applicant without justification, arguing it denied the Appellant the right to be heard, while the submissions were filed as per annexure A-2 to the affidavit. He cited the case of **Afriscan Group (T) Limited vs Said Msangi**, HC; also **VIP Engineering and Marketing Ltd vs Citibank Tanzania Ltd**, Consolidated Reference No. 6, 7 and 8 of 2006, for a proposition that illegality may be a good ground to extend time.

In reply, Mr. Levis B. Lyimo learned Counsel for Respondent submitted that if there was an illegality and irregularity on the judgment of the Tribunal, the Applicant ought to file the application for revision within time. He submitted that a copy of the judgment of the Tribunal was collected by the Applicant since last year, where upon receiving it, the Applicant notified the Counsel for Respondent and send it to the later via WhatsApp after scanning. He submitted that the ground of illegality ought to be considered along with good cause for delay. He cited a case of **Chiku Harid Chionda vs Getrude Nguge Mtinga as Administratrix of the Late Yohana Claude Dugu**, Civil Application No. 509/2018, for a proposition that illegality must be visible on the face of record. He submitted that in the affidavit, the Applicant stated

that he was following the status of the case including the date of judgment. The learned Counsel submitted that the reasons advanced by the Applicant are not sufficient, as the Applicant was supposed to file the application for revision after receiving a copy of judgment since last year.

This application was taken without base and sufficient cause. This is because, the Applicant failed miserably to explain as to why it took more than nine months counting from 19/9/2022 when the impugned judgment was delivered to 4/07/2023 when this application was filed. In the affidavit, the Applicant pleaded the reason for delay being attributed to misinformation on the dates also alleged travelled outside the country. However, the Applicant's grounds were self-defeating, because on the other hand he alleged to have been attending in all sessions, making inquiry on the status of the case. In the circumstance, one could wonder as to where the alleged misinformation come in. The Applicant neither stated as at what point he lost the track of his case.

It is true that annexure A-2 to the affidavit suggest that the Applicant presented before the Tribunal his reply to the Respondent's submission on 20/10/2021 and served the learned Counsel for Respondent herein on 22/10/2021. In the impugned judgment, at page two last paragraph, the learned Chairman stated that the Tribunal was satisfied that all submissions

were duly filed, and scheduled the matter for judgment. However, immediately thereafter, the tribunal made another observation that it was unable to see the reply submission by the Respondent (Applicant herein). Be as it may, the appellate Tribunal its findings were whole hinged on re-assessing the evidence adduced at the Ward Tribunal, wherefore the appellate Tribunal observed the following: the Appellant (Applicant herein) did not explain as to how he identified a suit land as an easement street; Respondent herein was not accorded chance to cross examine witnesses for the other side; the ward tribunal did not visit the locus in quo to establish if at all there is an easement or road and to what extent it was blocked by the Respondent herein; the ward tribunal ordered the Respondent herein to demolish, but did not state the extent of demolition, which facts according to the appellate Tribunal occasioned injustice to both sides, thereby the appellate Tribunal quashed the proceedings, judgment and all subsequent orders of the ward Tribunal, for being tainted with procedural irregularity and illegality, hence inexecutable. And advised whoever seems to be interested to pursue the matter, to file a fresh suit at the Bagamoyo District Land and Housing Tribunal.

With that remarks of the learned Chairman, to my view entertaining this application will be a futile exercise and wastage of time to both court and parties, dealing with a nullity.

The application is dismissed. Considering a fact that parties are contiguous lingering over an easement, I will make no order for costs.



E.B. LUVANDA  
**JUDGE**  
15/08/2023

**Court:**

Ruling delivered in the presence of Mr. Levis Lyimo Advocate for Respondent also holding brief for Mr. David Rwegasira Advocate for the Applicant.



E.B. LUVANDA  
**JUDGE**  
15/08/2023