IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.447 OF 2023

{Arising from Land Application No.16 of 2008, before the District Land and Housing Tribunal for Kibaha}

RAJABU MICKDAD MWILIMA.....1ST APPLICANT

GREGORY JOHN.....2ND APPLICANT

RITHA MALY.....3RD APPLICANT

OFORO KASSANAGA.....4TH APPLICANT

JONAS MLAY.....5TH APPLICANT

MARTHA XZAVERI.....6TH APPLICANT

VERSUS

WILLIAM MANAGHA GIDEME.....RESPONDENT

R U L I N G

Date of Last Order: 10.08.2023
Date of Ruling: 28.08.2023

T. N. MWENEGOHA, J.

The applicants are seeking for an order of extension of time so that they can lodge an Application for Revision out of time, against the Judgment and Decree of the District Land and Housing Tribunal for Kibaha, vide Land Application No. 16 of 2008, dated 24th March, 2011. The Application was supported by the joint affidavit of the applicants above named.

The Application was heard orally, Advocate Rajab Mrindoko, appeared for the applicants, while the respondent, enjoyed the legal services of Advocate Goodchance Lyimo.

Submitting in support of the Application, Mr. Mrindoko, after praying for the affidavit of the applicants to be adopted as part of his submissions, maintained that, the applicants have two reasons constituting sufficient cause for their delay to file the intended Application.

Firstly, the applicants were not aware of the existence of the Judgment and Decree as they were not part to the Land application No. 16 of 2008. They became aware of the impugned decision in early July, 2023, after the respondent's invasion on their land, with intention to demolish their buildings, purporting to execute the said Judgment. Since its about 13 years after the delivery of the impugned decision, hence, they need an extension of time for them to file their intended Application.

Secondly, the impugned decision contains illegalities as they were condemned unheard for not being made parties to the case, vide Land Application No.16 of 2008. Their right to be heard has been infringed, hence the decision needs to be revised.

In reply, Mr. Lyimo for the respondent, was of the view that, it is not true that, the applicants were un aware of the existence of the impugned decision. They were parties to the proceeding at the Tribunal, vide Misc. Application No. 318 of 2018. Therefore, they were fully aware of the said decision, as they were in a legal battle with the respondent up to 27th September, 2021, when the decision in the said case was delivered. Also, they were involved in various meetings between them and the respondent, conducted by Kimere Government. Further, since the delivery

of the impugned decision, various notices were sent to the applicants and other administrative authorities including the Ministry of Land, police station, District Commissioner of Bagamoyo as stated at paragraph 11 of the counter affidavit. Therefore, their allegations are untrue and unfounded. It is clearly that they have failed to account for their delay hence their Application is devoid of merits, as stated in **Wambele Mtumwa Shahame versus Mohamed Hamis, Civil Reference No. 8 of 2016(unreported)** and also the case of **Dr. Ally Shabahi versus Bohara Jamat, 1997 TLR 305.**

On illegality as a reason for delay, the respondent's counsel insisted that, the facts that the applicants were not joined in the former case is a new fact. It was not included in their joint affidavit. Above all, the complained illegality should be apparent on the face of it, as stated in **Lyamuya Construction Company Limited versus Young Women's Christian Association of Tanzania.** It was insisted in this case that, not every illegality pleaded warrants an extension of time.

In rejoinder, the applicant's counsel insisted that, the respondent's counsel mentioned the existence of meetings involving the applicants and the respondent. However, he did not give the list of names of the person who attended the meeting to prove if the applicants were among them. He also agreed that for an illegality to constitute a reason for enlarging time, the same must be apparent on the face of records. However, he insisted that, it is not true that, in this case there are no illegalities.

Having gone through the submissions of both parties, the affidavit in support and the counter affidavit against the Application the issue for determination is whether the Application has merits or not.

In case of extension of time, the law imposes a duty to the applicant to give sufficient reason for his delay, before the Court can allow the said Application. However, the law has not defined in clear terms as to what amounts to a sufficient cause. It depends with the circumstances of each case, see **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD, Court of Appeal of Tanzania, Civil Application No. 13 of 2010 (Mwanza Registry, (unreported).**

In the present case, the applicants have stated two reasons for their Application to be allowed. Firstly, that, they were not aware of the existence of the case, until when the same was on execution stage, where the respondent appeared in the land in question and demolish their houses. Secondly, they contended that, the impugned decision contains illegalities, as they were condemned unheard for not being made parties to the former case (Land Application No. 16 of 2008).

In fact, I agree with them, that, their reasons for delay may constitute good cause, capable of enlarging the time. The question however is, will they be able to pursue their intended cause under the circumstances surrounding their case. According to the facts stated in their joint affidavit, especially at paragraph 2, it is clear that, the impugned Judgment and its Decree has already been executed early this July. The applicants have stated that, the respondent invaded their land and demolished their houses used as their homestead. The demolition was done in execution of the Decree of the District Land and Housing Tribunal of Kibaha, vide Land Application No. 16 of 2008, dated 24th March, 2011. That is to say, execution of the Decree has been effected, hence the case is complete. That is why I wonder, under these circumstances, if Revision of the impugned decision is a proper remedy to the applicants. Obvious, it is not.

Therefore, even if I allow this Application, my decision will be of no value, owing to the circumstances I have explained here in above. Hence, I find no merits in the instant Application due the reasons afore given.

In the end, the Application is dismissed. No order as to costs.

Ordered according.

T. N. MWENEGOHA

JUDGE

28/08/2023