

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

MISC LAND APPLICATION NO. 556 OF 2023

(Arising from Land Case No. 104 of 2008)

JULIUS EMMANUEL JOSEPH1ST APPLICANT

**JULIUS EMMANUEL CHI WALALA (As the administrator of the Estate of
EMMANUEL JOSEPH CHI WALALA.....2ND APPLICANT**

VERSUS

MARTIN MATIKU NIRAHA.....RESPONDENT

RULING

20th to 22nd November, 2023

E.B. LUVANDA, J

The Applicant named above is seeking for extension of time within which to file the notice of appeal against the decision of Hon. Judge Kalombola dated 29/09/2015 in Land Case No. 104/2008.

In the affidavit in support of the application, the Applicant grounded technical delay in prosecution Application No. 577/2017, Civil Appeal No. 999/2020 to the Court of Appeal and Misc. Land Application No. 235/2023 dismissed on 04/08/2023; illegality in the impugned decision, argued the disputed property was sold under LART, all disputes over the property under LART were tried by

LART Loans Recovery Tribunal and the Respondent acquired the disputed premises during existence of injunctive order by way of maintenance of status quo.

Antipas Lakam learned Counsel of the Applicant submitted that the grounds upon which prayer for extension of time is preferred are: Applicants have been legitimately pursuing their right to appeal to the Court of Appeal by taking necessary steps before this Court; illegality exists in the decision of this Court in Land Case No. 104/2008 which the Applicant want to address before the Court of Appeal; Applicants have accoutered for each day of delay. Elaborating the above grounds, the learned Counsel for Applicants submitted that from 31/07/2017 to 21/02/2020 have been pursuing application No. 577/2017, from 03/03/2020 to 24/03/2023 the Applicants have been pursuing application No. 577/2017, from 03/03/2020 to 24/03/2023 the Applicants have been pursuing their right of appeal to the Court of Appeal, from 25/03/2023 up to 21/04/2023 the Applicants were withdrawing defective notices of appeal to the Court of Appeal. On 22/04/2023 the Applicants applied Application No. 235/2023 up to 04/08/2023 when it was dismissed. On 28/08/2023 the Applicants took all necessary steps to institute this application. He submitted that the Applicants have faced technical delay occasioned by the existence of matters in court. He cited **Fortunatus Masha vs. William Shija** (1997) TLR 154. The learned

Counsel submitted that there exist illegality over the decision of Land Case No. 104/2008, arguing that all disputes over the property under LART were tried by LART Loans Recovery Tribunal, citing section 19(1) of the Loans and Advances Realization Trust Act, Cap 248 R.E. 2002. He submitted that the position of law remain valid, until when the LART Loan Recovery Tribunal was extinguished by the National Bank of Commerce (Reorganization and Vesting of Asset and Liabilities (Amendment) Act No. 10/2007. He submitted that the Law required all disputes pending to the LART Loans Recovery Tribunal to be referred to the High Court by the corporation or taken over by the Attorney General. He argued that this Court have no jurisdiction over the Land Case No. 104/2008. He cited the case of **Principal Secretary Ministry of Defence vs. Devran Valambhia** (1992) TLR 185; **Attorney General vs. Emmanuel Marangakisi** Civil Application No. 138/2019.

It is common ground that when a litigant is sloppy and inaction in pursuing his course, he cannot take hide and cover under illegality over the impugned decision. Trully after withdrawal of notices of appeal on 11/04/2023 via Misc. Civil Notice No. 21/2023, on 12/04/2023 the Applicant filed Misc. Land Application No. 235 of 2023. According to the order dated 04/08/2023 for dismissal of Misc. Application No. 235/2023, reveal that the Applicant defaulted to enter appearance without notice. In the affidavit of Antipas Seraphin Lakam,

he alleged to have rushed to Ocean Road Cancer Institute to attend and consent for a procedure of her grandmother bed ridden for fifteen days. However, the learned Counsel could not even mention the name of the alleged grandmother let alone to attach any medical record, chit or discharge. Infact, he could not tell even the fate of the illment and procedure as alleged. The counsel allege to have made followup and learned of the dismissal order on 07/08/2023. And further allege to have received a typed order on 28/08/2023. However, he did not attach any letter for requesting the alleged order, neither any dispatch for receiving it on the alleged 28/08/2023. In the said order, nowhere it indicate to have been extracted belately to the extent explained by the learned Counsel. Therefore, a delay from 04/08/2023 when Misc. Land Application No. 235/2023 was dismissed, to 05/09/2023 when this application was filed, was inordinate, unexplained and un accounted for. In fact even reasons for non attendance on 04/08/2023 are wanting.

In view of that it cannot be said that the Applicant accounted for each delays nor can it be said is eligible to be accommodated for the alleged technical delay or illegality as pleaded by the Applicant.

Notwithstanding a fact that the Respondent did not file any counter affidavit or submission, still the Applicant was duty bound to advance his course as per the requirement of rules governing extension of time.

The application is dismissed. No order for costs.



E. B. LUVANDA
JUDGE
22/11/2023

Ruling delivered in the presence of Antipas Lakama learned Advocate for Applicants and Chiwala learned Counsel for Respondent.



E. B. LUVANDA
JUDGE
22/11/2023