

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 484 OF 2023

(Originating from Land Case No. 45 of 2017 of the District Land and Housing Tribunal for Kibaha at Kibaha Before Honourable JEROME NJIWA)

SOPHIA KOMBA APPLICANT

VERSUS

AMINA ATHUMANI 1ST RESPONDENT

TUNU HABIBU MANENO (As Administrator

of the estate of the late HABIBU MANENO CHAMBUSO ... 2ND RESPONDENT

JUMA KOMBA ERASTO (As Administrator

of the estate of the late DAUD TAJI) 3RD RESPONDENT

08/11/2023 & 21/11/2023

RULING

A. MSAFIRI, J

This is an Application for extension of time within which to file revision on the decision of the District Land and Housing Tribunal of Kibaha (herein the District Tribunal) in Land Application No. 45 of 2017, which was between Amina Athumani (who was the applicant) against Habibu Maneno Chambuso and David Taji (who were the 1st and 2nd respondents respectively). The decision was delivered on 01/10/2018 in favour of the applicant (Amina Athumani) whereby she was declared the lawful owner of the suit land described to measure one (1) acre, located

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at Kwa Manofu, Kerege Ward, Bagamoyo District. The applicant in the instant Application was not party to the proceedings at the District Tribunal and she claims to be the lawful owner of the suit land hence she intends to file revision on the said decision. However she is out of time as per the law hence she has filed this Application seeking for extension of time.

The Application is made by way of chamber summons supported with an affidavit deponed by Sophia Komba herein the applicant the same is contested by the respondents who filed their counter affidavits. The joint counter affidavit by the 2nd and 3rd respondents was jointly deponed by Tunu Habibu Maneno and Juma Komba Erasto as well as the 1st respondent counter affidavit was deponed by Amina Athuman.

The hearing was orally whereby the applicant was represented by Mr Adam Kasegenya, learned Advocate, on the other hand the 1st respondent enjoyed the legal service of Mr. Richard Mwalingo, learned Advocate, while the 2nd and 3rd respondents were present in person.

Mr Kasegenya was the first to kick the ball rolling by submitting that the applicant was the 2nd respondent's wife in the Land Application No. 45 of 2017 one DAVID TAJI. That she is seeking for extension of time to file revision against the above decision by the District Tribunal on the ground that its decision was tainted with illegalities and irregularities. *Alls.*

The counsel stated that the said illegalities includes failure to join the current applicant in the Land Application No. 45 of 2017 at the District Tribunal while the said suit land was jointly acquired by the applicant and her late husband DAVID TAJI in 2011. The sale agreement was attached as Annexure SK I in the affidavit.

The counsel argued that the applicant in Land Application No. 45 of 2017 Amina Athumani is the current applicant's neighbour and that she was aware of the demise of the current applicant's husband, yet, she went on and instituted the said Application against the deceased without notifying the Applicant as the surviving owner. That, the Application No.45 of 2017 was instituted in the District Tribunal while the 2nd respondent David Taji has already passed away.

Mr Kasegenya submitted further that the applicant was unaware of the instituted Application No. 45 of 2017 until on 23/11/2022 when the Broker orally informed the applicant to vacate the suit land.

That following that awareness, the applicant followed up on the matter and on perusal of the District Tribunal proceedings, she found that Application No. 45 of 2017 was heard and determined ex-parte without her being served any notice. After that she instituted two different Applications in this Court which were all struck out with leave to refile hence this Application which was filed on 07/08/2023. He pointed that,

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the Land Application No. 45 of 2017 was tainted with illegalities and that the issue of illegality is sufficient cause for granting extension of time.

To bolster the above reasons, he cited the case of **James Anthony Ifada vs. Hamis Alawi**, Civil Application No. 482/14 of 2019, CAT at Shinyanga.

He prayed for this Court to grant the Application.

In response, Mr. Mwalingo learned advocate stated that the applicant has not accounted for the days of delay because, since the applicant has alleged to become aware of the Land Application No. 45 of 2017 on 23/11/2022, hence, from 23/11/2017 to 07/08/2023 when this Application was filed before this Court, it is a delay of 258 days which has not been accounted for by the applicant. He contended that, the Application cannot be granted where no sufficient reasons for the delay has been advanced. He cited the case of **John Ackley Matoi vs Khalid Kileo**, Civil Reference No. 6 of 2020, CAT at Moshi, (Unreported) which ruled that the applicant ought to account even for a single day of delay.

Mr Mwalingo argued that the issue of illegality must be pleaded in the affidavit and should not be a statement from the bar.

He said that it was not the duty of the Court to amend proceedings if a party passed away. That under Order XXII Rule 4(1) of the Civil 

Procedure Code, Cap 33 R. E 2019, the other party is to move the Court to grant leave for the legal representative of a deceased person to be made a party to the suit. Hence, the District Tribunal did not make any irregularities in Land Application No. 45 of 2017 because it was not moved by the applicant to join the applicant as the surviving member of the 2nd respondent who was purportedly passed away. He added that there is no proof whether the applicant's husband had died when he died.

Mr Mwalingo cited the case of **Bilali Ally Kinguti vs Ahadi Lulela Said**, Civil Appeal No. 500 of 2021, CAT at Kigoma at page 15 which ruled that where there is no proof of death, the court has no way of knowing whether and when did the death occurred.

The 2nd and 3rd respondents who were representing themselves, adopted the contents of their counter affidavit, and further stated that they are not contesting the Application.

In rejoinder, Mr. Kasegenya, reiterated what was submitted in chief and prayers.

Having gone through the rival submission of the parties, it is my view that the issue for determination is whether the applicant has advanced sufficient and good cause to satisfy this Court to grant the extension of time to the applicant.

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The reason advanced by the applicant for the grant of the application is illegality on the face of records for two reasons one for failure to join the Applicant in Land Application No. 45 of 2017 while the suit land was jointly owned between the applicant and the deceased who was the 2nd defendant in the said Application as per the sale agreement.

Two, that the District Tribunal heard and determined Land Application No. 45 of 2017 ex-parte against the applicant's husband who was the 2nd respondent and is alleged to have been died by that time when the said Application was instituted against him.

The proof on whether there was illegality or not is not what is before me at this juncture, however, it is a trite law that among the reasons for grant of extension of time apart from accounting for the days of delay, illegality is one of the sufficient reasons for the grant of the Application.

In the case of **Grand Regency Hotel Limited Vs Pazi Ally & 5 Others**, Civil Application No. 100/01 of 2017 where it cited the case of **VIP Engineering & Marketing Limited & 2 Others vs. Citi Bank Tanzania Limited** where the Court of Appeal stated that:

*"It is therefore, settled law that a claim of **illegality of the challenged decision constitutes sufficient reason for extension of time** under Rule 8 regard less of whether or not a*

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reasonable explanation has been given by the Applicant under the rule to account for the delay".(Emphasis added).

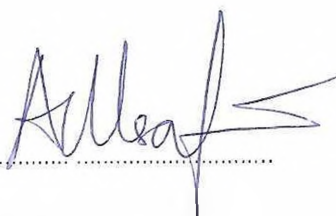

Also in the case of **Principal Secretary, Ministry of Defence and National Service vs. Divran P. Valambhia [1992] T.L.R 387** the Court of Appeal held that; -

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right".

For the above reason of illegality, it is my finding that the applicant has managed to advance sufficient reason to be granted the extension of time to file revision.

The Application is hereby granted. The applicant to file the intended Application for Revision within 21 days from the date of this Ruling. Costs shall be in the cause.

It is so ordered.



A. MSAFIRI
JUDGE
21/11/2023