

Original

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

**MISC LAND APPLICATION NO. 661 OF 2023**

(Arising from Kinondoni District Land and Housing Tribunal  
Application No. 41 of 2009)

**RAPHAEL YAKOB NDITI.....APPLICANT**

***VERSUS***

**MAHAMOOD SALUM CHIBANGO.....1<sup>ST</sup> RESPONDENT**

**DAGOBERT JOHN KOMBA** (the Legal Administrator of

ANSILA KAPINGA).....2<sup>ND</sup> RESPONDENT

**RULING**

06<sup>th</sup> to 19<sup>th</sup> December, 2023

**E.B. LUVANDA, J**

This is an application for extension of time to file revision against judgment and decree of the Tribunal dated 05/05/2014 the Land Application No. 41/2009 and an order for execution issued on 05/05/2014 (sic, 23/09/2015) via Land Application No. 183/2014.

In the affidavit in support of the application, the Applicant pleaded to have not been sued or being a party in the above matters, let alone knowledge over the same, until on 24/03/2023 when he became aware upon being served with a fourteen days notice to vacate the suit house as per the annexure 1. The

Applicant averred to had filed Land Case No. 91/2023 on 06/04/2023 to challenge the above decision which was struck out on 15/06/2023; On 20/07/2023 filed Misc. Land Application No. 435/2023 for revision subject to extension of time, which was struck out on 28/08/2023 for being omnibus; on 13/09/2023 filed Misc. Land Application No. 575/2023 for extension of time to seek revision of the Land Application No. 41/2009, which was withdrawn, with leave to refile, a copy obtained on 03/10/2023, hence this application filed on 06/10/2023.

He grounded illegality in Application No. 41/2009, argued was procured improperly for failure to join him while have been living in the suit house for over forty years uninterrupted till on 24/03/2023. Another illegality was grounded on a premises that Land Application No. 41/2009 was fully determined in Civil Case No. 14/1993 between the same parties and same subject matter, as per decision annexure 6(i) and (ii).

In the counter affidavit, the Respondent asserted that the Applicant has at no point in time resided in nor owned Plot No. 121 Bahari Beach. He accused the Applicant for being an imposter planted by one Terry Komba and Dagobert Komba who are children of the late Dagobert Komba to frustrate the judicial process after the court having conclusively determined ownership infavour of the First Respondent. He averred that the subject matter in Land Application

No. 41/2009 had not been determined in Civil Case No. 14/1993, arguing the cause of action are different. He averred that Ansila Kapinga who was the Plaintiff in Civil Case No. 14/1993, after having lost her case in 2002, she trespassed in a suit land, hence the First Respondent sued her in Application No. 41/2009.

Mr. Beatus Malima learned Counsel for Applicant aligned his submission in line with the averments in the affidavit in support regard to the technical delay in prosecuting other causes and the ground of illegality. He submitted in a nutshell that illegality constitutes a good cause for extension of time, grounding *res judicata* and failure to join a party in the proceedings, arguing constitutes fundamental illegality. He cited the case of **Mufindi Paper Mills Limited vs. Ibatu Village Council & Two Others**, Civil Revision No. 555/17 of 2019.

In reply, Mr. Joseph Kapeche learned Counsel for First Respondent submitted that the Applicant has not accounted for each day of delay and blamed the Applicant for filing incompetent applications and suit. He cited the case of **Elias Mwakalinga vs. Domina Kagaruki & Others**, Civil Application No. 120/17 of 2018 CAT. Regarding the argument of illegality and *res judicata*, he submitted being misconceived, for reasons that the cause of action and relief sought in both cases are not the same. He submitted that in Civil Case No. 14/1993 was filed by the Second Respondent against the First Respondent claiming

ownership of two plots that is Plots No. 120 and 121 Bahari Beach Area, where the Second Respondent having lost her case few years later, she trespassed and constructed a small house on Plot No. 121 Bahari Beach Area, which to him created a new cause of action, arguing the new cause of action which prompted the First Respondent to file Application No. 41/2009.

On rejoinder, the learned Counsel for the Applicant, submitted that both judgments concerns the same subject matter and the same parties. He submitted that the Second Respondent having lost the matter in the Magistrates Court in Civil Case No. 14/1993, and the First Respondent having emerged the winner, over the same piece of land, the later was not required to conceal this fact and file a fresh suit, rather ought to execute the judgment in Civil Case No. 14/1993.

The main dominant ground for consideration is on the point of illegality. In the judgment of RM Civil Case No. 14 of 1993, Ansila Kapinga (Second Respondent herein) sued Mahamoud Chibango (First Respondent herein) claiming for reliefs among others to be declared the lawful owner of Plots No. 120 and 121, claiming her title rooted the way back in 1981 when she compensated Hamidu Mahamoud for crops and was surveyed in 1986, where villagers were promised to given first priority in allocation, however was allocated to the First Respondent whom possessed an offer and title deed. The Second Respondent

claimed to be the one who is in actual possession of the suit land. At the end of a trial, the case for the Second Respondent was dismissed on its entirety, it was on 22/01/2002.

In 2009, the First Respondent herein sued the Second Respondent herein, claiming ownership of Plot No. 121 Bahari Beach Area, under certificate of occupancy with title 37361, and accused the Second Respondent to have trespassed into the suit plot and erected a structure thereat. It was not stated as to when Plot No. 121 Bahari Beach was allocated to the First Respondent, neither stated as to when a certificate of occupancy was granted to him, nor disclosed as to when a trespass by the Second Respondent was committed or occurred. But eventually the First Respondent was declared to be the lawful owner, it was on 05/05/2014.

The learned Counsel for First Respondent argued that in Application No. 41/2009, it constituted a new cause of action after the Second Respondent trespassed and erected a building thereon. The question is when did the trespass and construction occurred, in light with evidence presented in RM Civil Case No. 14/1993 where the Second Respondent herein bragged to be in actual possession. Why the First Respondent did not disclose as to when he was allocated land, when trespass was committed, there is no factual as to why he sued in Plot No. 121 alone, in isolation of a twin Plot No. 120 mentioned in RM

Civil Case No. 14 of 1993, along with Plot No. 121. Why the First Respondent concealed judgment in RM Civil Case No. 14 of 1993, in light of a fact that therein the matter was heard interparties while in Application No. 41/2009, the First Respondent proceeded *ex-parte*.

To my view the above proposition cannot be deliberated at this stage, rather I hold a view that they constitutes both factual and legal points, worthy for consideration at the intended revision proceedings.

To that end, I grant the Applicant extension of time for a period of fourteen days from the date hereof, to present his intended revision.

The application is granted. No order for costs.



E. B. LUVANDA  
**JUDGE**

19 26/12/2023