

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. APPLICATION NO. 600 OF 2023

(Arising from Land Application No.310 of 2020 and
Misc. Application for execution No.64 of 2022)

JOYCE CHARLES MHINA..... APPLICANT

VERSUS

DIANA ALEX KAJUMULO.....1ST RESPONDENT

ROSE AMOS.....2ND RESPONDENT

CHARLES FORODHA.....3RD RESPONDENT

RULING

2nd November 2023 & 14th December 2023

L.HEMED, J

*"...That, this Honourable Court may be pleased to extend time within which the Applicant shall file an Application for Revision against the decision in **Land Application. No. 310 of 2020**, before the District Land and Housing Tribunal for Kinondoni at Mwananyamala, pronounced by **Hon. Mbilinyi, Chairperson.**"*

The above quoted passage is one among the prayers of one **JOYCE CHARLES MHINA**, the Applicant in the instant application presented



before this court for determination. The Application has been brought under section 14(1) of the Law of Limitation Act, [Cap.89 R.E 2019] and is supported by the affidavit of **JOYCE CHARLES MHINA, ANNA THEODOREY KAWALA, JULIA DANIEL MWAKATWILA** and **ALLY YUSUPH KYONABWAINA**.

Only the 1st Respondent, **DIANA ALEX KAJUMLO** who challenged the Application *vide* her counter affidavit which was presented for filing on 12th October 2023. **ROSE AMOS** and **CHARLES FORODHA**, the 2nd and 3rd respondents respectively, could not file counter affidavit (s) as when they appeared on the 26th September, 2023 they recorded their position to support the application.

All parties appeared on the 2nd November 2023. The applicant was represented by **Ms. Olimpia Sudala**, advocate who was holding brief of **Ms. Noelina Dippa**, learned advocate. The 1st Respondent enjoyed the service of **Mr. Aliko Sengo**, learned counsel, while the 2nd and 3rd respondents were present in person. On the material date, the court directed the matter to be argued by way of written submissions. In fact,



the Applicant and the 1st Respondent are the ones who complied with the directives of the court as they promptly filed their submissions.

The background pertaining to this matter is that the 1st Respondent sued the 2nd and 3rd respondents before the District Land and Housing Tribunal for Kinondoni for trespass into a piece of land situated at Bunju "B", Kihonzile, Kinondoni Municipality measuring 162.3 square meters. The said suit which was registered as **"MAOMBI YA ARDHI NA.310 YA MWAKA 2020"** and determined *exparte*, ended in favour of the 1st Respondent. By the judgment delivered on 31st August 2021, the 1st Respondent was declared lawful owner of the suit landed property.

The Applicant who is the daughter of the 2nd and 3rd respondents appears to be aggrieved by the said decision. She did not prefer the application for revision in time hence the instant application looking for extension of time to lodge the same.

I have gone through the rival submissions and affidavits. Ofcourse, this application has been preferred under section 14(1) of the Law of Limitation Act, [Cap.89 RE 2019. It provides thus:-



*"14.-(1) Notwithstanding the provisions of this Act, the court may, **for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application,** other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."* (Emphasis added)

The provision hereinabove envisages for the applicant to demonstrate sufficient cause for the court to extend the period of limitation. The question that arises in the instant matter is whether the Applicant has demonstrated sufficient cause to warrant this court extend limitation period to file application for revision.

In her attempt to persuade this court to grant her prayers, the Applicant placed reliance on the following grounds:-

1. That she was not aware of existence of Land Application No.310 of 2020;



2. Being underage to initiate any proceeding on her own;
3. Technical delay by filing wrong applications which were struck out, both filed by the 2nd and 3rd respondent in their names; and
4. Illegalities.

As regard the 1st ground, the Applicant argued that judgment in Land Application No.310/2020 was delivered on 31st August 2021, but until 24th January, 2023, when the Applicant became aware of the said decision. She was of the opinion that the 512 days are excusable as she was not aware of the said decision.

She argued collectively the 2nd and 3rd ground that, the Applicant was born in 2005 and that since she was underage, her rights solely depended on the 2nd and 3rd respondents' initiatives and guidance. She averred to trust them to do something to protect her rights which in fact they tried unsuccessfully. It was further argued that, the applicant's parents, that is the 2nd and 3rd respondents took prompt action to rescue the applicant's rights over the suit property but they were faced with technical delay. She added that, the 2nd and 3rd respondents in a span of 10 days inquired



about Land Application No. 310/2020 and filed three applications by 02nd February, 2023 which were withdrawn for lack of *locus standi*. The Applicant also filed an objection proceeding on 19th May 2023 via Misc. Land Application No. 263 of 2023 which ended up being struck out on 27th July 2023. It was the submission of the learned counsel that, the Applicant is not the one to be blamed for the delay because it was her parents who took a wrong course. She relied on the decision of the Court of Appeal of Tanzania in **Finca (T) Limited and Another v, Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, where it was held that the applicant will be granted extension of time upon demonstrating sufficient cause for the delay.

On the ground of illegality, it was argued that the respondents were not served with the summons to appear for *ex-parte* judgment. It was the view of the counsel for the Applicant that the failure to issue summons to the respondents amounts to denial of the right to be heard. She tried to fortify her arguments by citing the decision of the Court of Appeal of Tanzania in **Lyamuya Construction Company Limited vs. Board of Registered Trustee of Young-Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010.



In response thereto, the counsel for the 1st Respondent contended that if the Applicant thought her legal interest had been violated, she ought to have instituted or defended the suit against the 1st Respondent as she was aware of what was going on through her parents. He was of the view that being underage is not an excuse. He added that, the Delay for 112 days by the Applicant as from 24th January, 2023 when it came to the knowledge of the applicant on the existence of land application No.310/2020 to 16th May, 2023 has no justification. It was further stated that delaying for 54 days from 27th July 2023 when application No.263 of 2023 was struck out to the day of filing her instant application is not excusable.

Responding to the assertion of illegality, the 1st Respondent insisted that the issue of illegality in the proceedings does not automatically constitute sufficient cause for grant of extension of time unless it is apparent on the face of the impugned decision. He relied on the decision of the Court of Appeal of Tanzania in **Chiku Harid Chionda vs Getrude Nguge Mtinga as Adminstratrix of the late Yohane Claude Dugu**, Civil Application No. 509/01 of 2018.



In her rejoinder, the counsel for the Applicant reiterated the submissions in chief. She repeated that good cause has been demonstrated to warrant the court grant the application.

I will start with the 1st ground that she was not aware of existence of Land Application No.310 of 2020 before the trial Tribunal. I am at one with the counsel for the Applicant that since the Applicant was not a party to the original proceedings, that is, in Application No.310 of 2020, before the District Land and Housing Tribunal for Kinondoni, then, it is obvious that she could not know on the existence of a case to which she was not a party. However, the Applicant was obliged to account for the delay from the date she came to know on the existence of the impugned decision. I have carefully gone through the affidavit deposed by JOYCE CHARLES MHINA, in paragraph 12 she asserted thus:-

"12. That, 2nd and 3rd respondent started to inquire what has transpired and via a letter dated 30th January, 2023 to the tribunal they found that, in 2020 the 1st respondent sued them via Land Application No.310/2020 claiming the land she gave to me was hers and the suit had proceeded exparte



*in her favour. I was neither made party to that suit
nor informed about it."*

The above paragraph implies that the 2nd and 3rd respondents became aware of Land Application No.310/2020 on 30th January 2023. Since the 2nd and 3rd respondents are the parents of the Applicant it is no wonder that she as well became aware of the said case the same time. Therefore, the time started to run against the Applicant on 30th January, 2023 when she became aware of the matter.

The first action taken by the Applicant against the impugned decision was on 19th May 2023 when she lodged an objection proceeding against the execution of the impugned decree. From 30th January 2023 to 19th May 2023, there were at least 108 days in which the Applicant relaxed without doing anything. It is settled law that a person seeking for extension of time like in the present case, must account for each day of the delay. The courts of record have been insisting on this requirement in various decisions. For instance, the Court of Appeal of Tanzania in **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application



No. 2 of 2010 provided the guidelines for extension of time, one of them being, accounting for all the period of delay, where it said:-

"the following guidelines may be formulated:-

- (a) The **applicant must account for all the period of delay,***
- (b) The delay should not be inordinate,*
- (c) The applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the action that he intends to take." (Emphasis added).*

In the instant matter the Applicant has not said what she was doing between 30th January 2023 and 19th May 2023. In other words, she has not accounted for that period of the delay. In **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No.192/20 of 2016, the CAT insisted that:

"a delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing periods within which certain steps have to be taken."

The Applicant in paragraph 13 of her affidavit has asserted that she was below the age of majority that everything was to be done by her parents



(the 2nd and 3rd respondents). In the first place, the Applicant could not substantiate her assertion to prove her age as nothing like the birth certificate was attached at least to prove the age of the applicant. This is pursuant to section 110(1) of the Evidence Act, [Cap.6 RE 2019], which requires a person who alleges to prove. In the present application, the Applicant has failed to prove that by 30th January 2023 she was underage.

Besides, even if we assume that the Applicant was underage, the Civil Procedure Code, [Cap.33 RE 2019] under Order XXXI Rule 1 permits minors to sue by next friends. It provides thus:-

"Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor."

If at all the Applicant was determined to challenge the said impugned Decree, she ought to have done so through the aforesaid provision. The fact that she opted to relax, then she cannot stand and place reliance on being underage which has not been proved as well.

With regard to the ground of technical delay, I am at one with the counsel for the Applicant that technical delay is one of the grounds for extension of time. The ground of technical delay was developed by the CAT



in the case of **William Malaba Butabutemi vs Republic**, Criminal Application No.6 of 2003 and insisted in **Stephe B.K Mhauka vs the District Executive Director**, Morogoro District Council and 2others, Civil Application No.68 of 2019. From the said two decisions, a person may place reliance on technical delay if he/she wasted time prosecuting defective own matter in court. In the present case, the applicant has relied on the cases which were instituted by the 2nd and 3rd respondents. I have examined Misc. Applications Nos.45/2023, 49/2023 and 50/2023 and found that they were instituted in the names of the 2nd and 3rd respondents. In fact, they were not instituted on behalf of the Applicant that is the reason they were withdrawn for want of *locus standi*. Being the case, the Applicant cannot rely on the said cases instituted by other persons to constitute technical delay.

The last ground relied by the Applicant is Illegality. The illegalities pointed out by the Applicant are such that the 2nd and 3rd respondents were not served properly to enter appearance. The assertion of the 2nd and 3rd respondents being not served ought to have been supported by the 2nd and 3rd respondent, however, there is no affidavit being deponed by the persons who were to be served, perhaps to support the applicant's

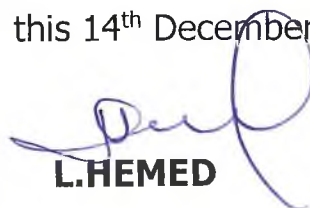


assertion. In the absence of the affidavit of the 2nd and 3rd respondents, the assertion of the applicant in respect to service of summons remains a hearsay.

I do agree that illegality is one of the grounds for extension of time, but such illegality must be apparent on the face of the impugned decision. In the instant case, the alleged illegality is not on the face of the impugned judgment of the trial Tribunal rather, the applicant is claiming that the 2nd and 3rd respondents were not served. This cannot be an illegality apparent on the face of the impugned judgment.

From the foregoing, the Applicant has demonstrated no good cause to warrant the court to grant the application. In the upshot, the entire application is dismissed without costs.

DATED at **DAR ES SALAAM** this 14th December 2023.


L. HEMED

JUDGE

