

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 713 OF 2022**

(Arising from the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Misc. Land Application No. 135 of 2014 Originating from Mabibo Ward Tribunal in Application No. 19 of 2014)

**AKURINO R. KYANDO ..... APPLICANT**

**VERSUS**

**HAMISI RAJABU KAKOLWA ..... 1<sup>ST</sup> RESPONDENT**

**GORDON NAHUM KILUSWA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 17.01.2023*

*Date of Ruling 27.01.2023*

**A.Z.MGEYEKWA, J**

I am called upon in this matter to decide whether this court should exercise its discretion under section 14. of the Law of Limitation Act, Cap.89 [R.E 2019] to extend time within the applicant to lodge a revision out of time against the decision of the District Land and Housing Tribunal for

Kinondoni. The application is supported by an affidavit and supplementary affidavit deponed by Akurino R. Kyando, the applicant. The 1<sup>st</sup> respondent resisted the application and demonstrated his resistance by filing a counter affidavit, affirmed by Hamisi Rajabu Kakolwa, the 1<sup>st</sup> respondent. The application proceeded *ex parte* against the 2<sup>nd</sup> respondent upon proof of service through substitution published in Mwananchi Newspaper on 2<sup>nd</sup> December, 2022.

When the matter was called for hearing on 20<sup>th</sup> December, 2022, the applicant enjoyed the legal service of Mr. Omega Juael, learned counsel, and the 2<sup>nd</sup> respondent enlisted the legal service of Mr. Isihaka Yusuph, learned counsel. By the court order, the application was argued by way of written submission whereas both parties complied with the Court order.

In his oral submission, Mr. Omega began to narrate the genesis of the matter which I am not going to reproduce in this application. The applicant's counsel submitted that the applicant is praying for this Court to grant an extension of time to file revision against the decision of the District Land and Housing Tribunal for Kinondoni at Mwanamala in Misc. Land Application No. 135 of 2014 originating from Mabibo Ward Tribunal in Application No. 19 of 2014 which the applicant was not a party of the case, however, have an interest in the suit land.

The learned counsel urged this Court to adopt the affidavit to form part of his submission. The counsel contended that the applicant has genuine reasons for his delay to lodge a revision before this Court. The counsel for the applicant went on to submit that there must good reasons by this Court to extend time. To bolster his submission he cited the case of **City Bank Tanzania Ltd v Tanzania Telecommunication Company Ltd & 7 Others**, Misc. Commercial Case No. 202 of 2017 HC.

The learned counsel for the applicant continued to argue that the applicant was not joined as a party to the proceedings therefore, he was not heard. In his view, the remedy available is for this Court to extend time within which the applicant can file a revision out of time. To support his submission cited the case of **Silvia Kifanyi v Victoria Service Station**, Misc. Application No. 07 of 2021 HC Labour Division, this court cited with approval the case of **Yusufu Goronga & 59 Others v Tanzania Electric Supply Co. Ltd**, Misc. Application No. 552 of 2018.

Mr. Omega also raised a ground of illegality, he contended that the illegality lies with the decision of the Ward Tribunal in Application No. 19 of 2014 that it tried the matter while it had no pecuniary jurisdiction. He went on to state that the applicant purchased the suit land in 2014 to the tune of Tshs. 30,000/= and he has a residential licence. He added that at

that time the trial tribunal was empowered to deal with matters not exceeding Tshs. 3,000,000/= and the District Land and Housing Tribunal for Kinondoni proceeded to execute the decision that was passed by the trial tribunal that lacked jurisdiction to determine the case. To support his position, he cited the case of **VIP Engineering and Marketing Ltd & 2 Others v Citibank Tanzania Ltd**, Consolidated Civil Reference Nos. 6, 7 and 8 of 2006, **City Bank Tanzania Ltd** (supra), **Michael Atanas Malila v Selemani Kululo**, Misc. Land Application No. 698 of 2021 (unreported) and **TANESCO Mfungo Leonard Majura & 15 Others**, Civil Application No. 94 of 2016 (unreported).

Mr. Omega stressed that when a point at issue is that the applicant was not a party to the proceedings and alleging illegality of the decision being challenged the Court if the alleged illegality be established needs to take appropriate measures to put the matter and the record right. To buttress his submission he cited the case of **The Principal Secretary Ministry of Defence & National Services v Devram Valambia** [1992] TLR 189. The applicant's counsel urged this Court to find that the applicant has advanced sufficient reasons for an extension of time based on illegality.

In conclusion, Mr. Omega beckoned upon this Court to grant the applicant's application and afford the applicant to file an application for revision.

Objecting to the application, in his written submission, the 1<sup>st</sup> respondent opposed the application with some force. Mr. isihaka urged this Court to adopt the counter affidavit to form part of his submission. The learned counsel for the respondent started to explore the background of the case which I am not going to narrate in this application. Mr. Isihaka contended that the applicant trespassed into the 1<sup>st</sup> respondent's plot and asserted ownership while the plot in question is different from the house he purchased from the 2<sup>nd</sup> respondent. He went on to submit that the 1<sup>st</sup> respondent filed an application for execution at the District Land and Housing Tribunal to execute the trial tribunal Judgment and he did not attach the said house as it was not the intended security given for the loan.

Regarding the issue of the applicant not being a party to the case, Mr. Isihaka contended that the applicant could not be a party of the case in which he has no interest. He argued that the applicant in his affidavit, particularly paragraph 9 stated that the 1<sup>st</sup> respondent had knowledge that he purchased the house but he failed to give cogent evidence to support his claims.

Concerning the ground of illegality, Mr. Isihaka contended that the applicant has no interest in the suit land hence he has no locus standi to move this Court to extend time. He stressed that a stranger cannot be joined as a party to the proceedings and has no right to seek revision over the decision which he is a stranger and less affected by the said decision. The learned counsel went on to submit that the power to extend time is broad and discretionary it can only be exercised if good cause is shown.

Mr. Isihaka submitted that the court has always invariably considered factors such as length of delay, the reasons for the delay, the degree of the prejudice the respondent stands to suffer, whether the applicant was diligent, whether there is a point of law of sufficient importance such as the illegality and such illegality must be on the face of the record. To buttress his contention he cited the case of **Omary Ally Nyamalenge (as an administrator of the estate of the late Selemani Ally Nyamalenga) & two others v Mwanza Engineering works**, Civil Application No. 94/08 of 2017 CAT at Mwanza.

Mr. Isihaka did not end there, he argued that the applicant was not diligent and the instant application is an afterthought. To support his submission he referred this Court to paragraph 4 of the applicant's affidavit where he stated that the 1<sup>st</sup> respondent trespassed on the property used for parking

vehicles while the suit plot contained a house and the same is not his property.

On the strength of the above submission, the 1<sup>st</sup> respondent's counsel beckoned upon this court to dismiss the applicant's application for the main reason that the applicant has failed to account for each day of delay.

Rejoinder, the applicant reiterated his submission in chief. Mr. Omega stressed that the applicant was not party of the proceedings and he is the lawful owner of the suit land.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge an appeal. The central issues for consideration and determination are whether or not the applicant has shown good cause to justify his application.

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase 'good cause' but the court consistently considers factors such as the length of the delay involved; the reason for the delay; the decree of prejudice, if any, that each party stands to suffer

depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal; whether there is a point of law of sufficient importance. There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v Amos David Kassanda & 2 others** Civil Application No.48/17/2018 and the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

*“It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.”*

As courts emphasize the need to assign sufficient causes, it is been underscored, as well, that in determining what constitutes sufficient cause regard has to be had to all circumstances of a particular case. The same was held in the cases of **Dephane Parry v Murray Alexander Carson (1963) EA 546**; and **Regional Manager, Tanroads Kagera v Ruaha Concrete Company Limited**, CAT-Civil Application No. 95 of 2007 (unreported). As rightly pointed out by Mr. Isihaka, in an application for an

extension of time the applicant must account for every day of delay. This requirement got a broadened scope in the epic decision of the Court of Appeal Tanzania in **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019. Also the same was held by the Court of Appeal in the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) that:-

*"Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."*

Gathering from the submissions and affidavit, the applicant in paragraphs 2, 3, 4, and 5 of his affidavit claimed that he was not a party to the case in the Ward Tribunal and delayed to lodge an application for revision because he was not aware that there was the case until 2021 when he received a summons showing that there is a pending application at the District Land and Housing Tribunal whereas the 1<sup>st</sup> respondent claimed that the applicant trespassed into his land. According to the record, the matter at the trial Tribunal was finalized in 2014 and the District Land and Housing Tribunal for Kinondoni proceeded with execution in 2014. The applicant claims that he was aware that there was a dispute which involves his house in 2021, however, I have gone through the applicant's

affidavit and found that the applicant has failed to account for each day of delay. The applicant did not account for the days of delay from the year 2014 when the trial Tribunal delivered its judgment to the year 2021 when he received the alleged summons. The applicant has failed to account for each day of delay from October, 2021 when he received the said summons to the date when he lodged the instant application. Also, the applicant in his affidavit did not mention the exact date when he engaged the learned counsel to justify his delay.

Guided by the above-cited authorities, I hold that the applicant has miserably failed to account for each day of delay. As a result, this ground is disregarded by this Court.

Next for consideration is the second ground of illegality. The legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for an extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported). In **Principal Secretary, Ministry**

**of Defence and National Service v Devram Valambhia** [1992] TLR 185

at page 89 thus:

*"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 straight.**" [Emphasis added].*

Similarly, in the case of **Lyamuya Construction** (supra), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an extension of time if he applies for one. **The Court emphasized that such a point of law must be of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.**" [Emphasis added].*

Applying the above authorities, it is clear that the ground of illegality that has been cited by the applicant touches on pecuniary jurisdiction and the applicant has alleged that he bought the suit property from the 2<sup>nd</sup> respondent. To support his allegation, the applicant attached a copy of the Sale Agreement and Residential Licence. I have also considered the fact that the applicant was not a party to the suit at the Ward Tribunal, thus, he might have some genuine claims against the respondents. Therefore, in my considered view, this point of illegality meets the requisite threshold for consideration as the basis for the enlargement of time, and this alone is weighty enough to constitute sufficient cause for the extension of time.

In sum, based on the foregoing analysis I am satisfied that the above ground of illegality is evident that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge a revision before this Court within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 27<sup>th</sup> January, 2023.



Ruling delivered on 27<sup>th</sup> January, 2023 in the presence of Mr. Omega Juael, counsel for the applicant, and Mr. Isihaka Yusuph, counsel for the respondent.

