

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND CASE APPLICATION NO. 800 OF 2022**

BETWEEN

RHODA JOHSON BALEGEZAAPPLICANT

VERSUS

LEONARD RAPAHHEL MTUNDA.....1ST RESPONDENT

LOLIJO MAPASI MKABE.....2ND RESPONDENT

RULING

Date of last Order: 21/02/2023

Date of Ruling: 28/02/2023

A. MSAFIRI, J.

The applicant has lodged an application by way of chamber summons under section 14 of the Law of Limitation Act, Cap. 89 R.E. 2019 for the following orders;

1. That this Honourable Court be pleased to grant extension time to file an application for Revision against the decision of Ilala District Land and Housing Tribunal in Land Application No. 39 of 2012 delivered on 22nd May 2017.
2. Any other reliefs this Honourable Court may deem fit to grant.

The application is supported by an affidavit deposed by the applicant. The respondents filed their counter affidavits by which the 1st respondent

Atls

vehemently contested the application while the 2nd respondent was in support of the same.

On 21/02/2023 when the parties appeared for the first time before the Court, they were unrepresented but ready to proceed with the hearing. They all opted to be heard orally and since the pleadings were complete, the hearing proceeded.

The applicant's submission was brief. She prayed to adopt the contents of her affidavit to form part of her submissions. She said she is seeking for an extension of time so as to be able to file an application for Revision.

In her affidavit, she narrated that in August 2020, she received a notice from Mwangati Auction Mart notifying her on the intention to sell her house which is a matrimonial property (house in dispute). That, upon receiving the said notice, she filed Land Application No. 216 of 2020 before Ilala District Land and Housing Tribunal (District Court). The application was struck out on 15 March 2022 for the reason that the Tribunal was *functus officio*.

She said that, she requested for copies of judgment and decree which were availed to her on 19th April 2022. That, she was obtaining legal assistance from Tanzania Women Lawyers Association (TAWLA) but on 12th May 2022 she was referred to the Legal and Human Rights Centre (LHRC) for legal aid. That on 17th May 2022 she visited LHRC and she was told that she was out of time to file an appeal in this court.

The applicant stated further that she was assisted in filing Misc. Application No. 268 of 2022 before this Court and it was found that the *Adls.*

application was brought under wrong provision of law so the application was withdrawn.

Following that, the applicant filed Misc. Application No. 654 of 2022, and it was heard whereby she was granted thirty (30) days to file appeal out of time against the decision of the District Tribunal in Land Application No. 216 of 2020.

That, in the course of preparation for the appeal, it was discovered that the decision in Land Application No. 39 of 2012 before the District Tribunal was never challenged or varied in any court of law and it align with the judgment of Land Application No. 216 of 2020. The applicant was advised to file for revision. So, following the said advice she has filed the present application seeking to revise the decision of the District Tribunal out of time since she was condemned unheard. She prayed for the Court to grant the application as prayed in the chamber summons.

In reply, the 1st respondent prayed to adopt the contents of his counter affidavit to form part of his submissions. He contended that the applicant has no good reasons for delay and that she is using delaying tactic to stop him (1st respondent) from proceeding with execution which has already been granted by the court.

The 1st respondent submitted further that the applicant is the wife of the 2nd respondent who was the respondent in Application No. 39 of 2012, so, the applicant was all the time aware of the proceedings.

He prayed for the dismissal of the application. *Amg.*

The 2nd respondent filed a counter affidavit but was in support of the application and prayed for the same to be granted as the application has merit.

In rejoinder, the applicant reiterated her submissions in chief.

Having gone through the record of this application, which includes the pleadings and submissions in Court, I have gathered that, there are several Applications concerning the suit premises which have been instituted in the courts of law.

These are Application No. 39 of 2012 before the District Land and Housing Tribunal for Ilala (District Tribunal), Application No. 216 of 2020 before the same District Tribunal, Application No. 268 of 2022 and Application No. 654 of 2021 before this Court (High Court Land Division).

According to the records, the applicant and the 2nd respondent are husband and wife. On 07th September 2009, the 2nd respondent and 1st respondent entered a sale agreement whereby the 2nd respondent sold a suit property to the 1st respondent. The suit property is an unfinished house.

However, it was claimed by the applicant that the suit property was a matrimonial property and it was sold without her consent. Hence another agreement was entered in 08th September 2009 between the 2nd respondent and 1st respondent where it was agreed that, the suit property was valued at Tshs. 12,000,000/= so the said property should be sold and the 1st respondent be refunded Tshs. 6,000,000/= as a purchase price within three months from 08th September 2009. *Adde.*

The 2nd respondent failed to honour the agreement and the 1st respondent instituted Application No. 39 of 2012 claiming for refund of purchase price and compensation for breach of contract. The application was decided in favour of the 1st respondent (then applicant) and the District Tribunal ordered for the 2nd respondent to pay Tshs. Seven (7) million to the 1st respondent within 30 days from the date of Judgment which was delivered on 22nd May 2017.

Aggrieved, the 2nd respondent (then applicant) instituted Misc. Application No. 67 of 2018 against the 1st respondent seeking for an extension of time to file an appeal against the Judgment and decree in Land Application No. 39 of 2012. The Application was dismissed on 22nd June 2018.

Following the dismissal, the now applicant Rhoda Johnson Balegeza, wife of the 2nd respondent instituted Land Application No. 216 of 2020 before the District Court against her husband, the 2nd respondent and the 1st respondent claiming that the 2nd respondent sold the suit property which is a matrimonial property without her consent. Among the reliefs sought, was declaration that the sale of the suit property was a nullity, and so the District Tribunal should release the suit property from the attachment. The Application was struck out on ground that the fate of suit property has already been determined and decided upon by the same District Tribunal so it was *functus officio*.

The applicant then filed before this Court Misc. Application No. 654 of 2021 seeking for extension of time to file and appeal out of time against the

Adler

decision of the District Tribunal in Land Application No. 216 of 2020. The Application was granted and the applicant was ordered to lodge an appeal within 30 days from the date of the Ruling which was 16th November 2022.

However, the applicant did not lodge the intended appeal and instead, she abandoned the appeal and filed the current Application on 06th December 2022 before the same Court and it is for an extension of time for revision of the decision of Land Application No. 39 of 2012 by the District Tribunal.

It is trite law that in an application for extension of time to do a certain act, like in the present one, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time. There are numerous decision both of this Court as well as the Court of Appeal which requires good cause to be shown before the Court can exercise its powers for extension of time.

In the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, the Court held inter alia that;

"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."

(see also cases of **Abdallah Salanga and 63 others vs Tanzania Harbours Authority**, Civil Reference No. 8 of 2003 and **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application No. 4 of 2014 (both unreported). *Alle* .

The issue here is whether the applicant has advanced sufficient reasons for delaying to file the Application for Revision of Land Application No. 39 of 2012 within time.

I have read the contents of the applicant's affidavit. I have discovered that the applicant has not advanced any reason for failure to file for Revision within time. The decision which is subject for revision was delivered on 13th May 2017 and certified copy was extracted on 13th September 2017. The applicant's affidavit and her submissions does not state why she failed to lodge an application within the statutory time.

The applicant only give narration of how she instituted a Land Application No. 216 of 2020 before the District Tribunal upon receiving a notice of intention to sale the suit property in September, 2020. This was the first attempt of the applicant to pursue her claimed right after about three (3) years since the delivery of the impugned decision which she intends to seek for revisal. All the incidents which are revealed by the applicant, which according to her, are account for delay, are from the year 2020. Nothing is being said about the incidents from 13th May 2017 when the decision to be revised was delivered.

At page 10 of the applicant's affidavit, she stated that she is filing the current application to revise the decision of the District Tribunal in Land Application no. 39 of 2012 out of time since she was condemned unheard. However, I find this reason to have no basis. This is because in the said Land Application No. 39 of 2012, Jolijo Mapasi Mkabe (now 2nd respondent)

Alle.

was the respondent. As observed earlier, Jolijo Mapasi Mkabe is the husband of the applicant and this fact was not disputed.

Hence, the applicant was aware of the decision in that Application No. 39 of 2012 since 13th May 2017. The husband Jolijo Mapasi Mkabe even intended to lodge an appeal against the said decision and filed an extension of time to lodge the said appeal. The application was dismissed.

At all this time, the applicant had opportunity to file for Revision but she did not do so. She waited for her husband to attempt an appeal on the matter and when the attempt failed, she decided to appear and seek revision.

In the circumstances, I find that the applicant has failed to give sufficient reasons for her failure to file an application for revision within the statutory time. The applicant has failed to account for delay from 13 September, 2017 when the impugned decision was extracted until August, 2020 when she received a Notice of intention to sale the suit property and decided to file Land Application No. 216 of 2020.

It is for the foregoing reasons that I hold the application at hand to have no merit and I hereby dismiss it with costs.



A. MSAFIRI

JUDGE

28/02/2023