

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 630 OF 2022

(Arising from the High Court (Land Division) at Dar es Salaam in Land Revision No. 14 of 2021 originated from Goba Ward Tribunal)

EDITH LAURENT SHIRIMA (Applying under Special Power

of Attorney of ROSELINE LEONARD SHIRIMA).....APPLICANT

VERSUS

MWAJABU SAID.....1ST RESPONDENT

JOSEPHAT S. ISUJA.....2ND RESPONDENT

KABANGO GENERAL BUSINESS (T) LTD.....3RD RESPONDENT

RULING

Date of Last Order: 06/12/2022

Date of Ruling: 15/02/2023

A. MSAFIRI, J

This Honourable Court, is called upon to grant extension of time for the applicant to file an application for certificate on points of law so that she can file an appeal to the Court of Appeal of Tanzania against the decision of this Court [Hon. B. S. Masoud, J] dated 11th day of January, 2022 in respect to Land Revision No. 14 of 2021.

The application was preferred under section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and any other enabling provisions of law. The current application is supported by an affidavit sworn by Edith Laurent Shirima, lawful attorney of Roseline Leonard Shirima, the

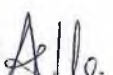
ALLS.

applicant. Equally, it was opposed vide the counter affidavit affirmed by Mwajabu Said and the other sworn by Josephat S. Isuja, the 1st and 2nd respondents respectively. While the 3rd respondent muted to the said application for the reasons known to himself despite being served accordingly.

By the consent of this Court dated 06th day of December, 2022, the parties argued the application by way of written submissions whereas, the parties filed their written submissions in compliance with Court's schedule.

Submitting in support of the application, Mr. Saiwello T.J. Kumwenda, the applicant's counsel stated briefly the background of this application. He stated that the application is due to this Court's decision in Application for Revision No. 14 of 2021, where the applicant was challenging the decision of Kinondoni District Land and Housing Tribunal (DLHT) where she was applying for stay of execution. The DLHT refused her prayers, so she knocked the doors of this Court, which also dismissed her application. Aggrieved by the decision, the applicant intends to pursue her rights to the Court of Appeal.

Mr Kumwenda submitted further that, however, since the matter originates from Goba Ward Tribunal, the applicant is required to seek and obtain a certificate on point of law before this Court. That because she could not file the application for the same immediately, she was time barred and had to seek for an extension of time hence the current application.

Mr Kumwenda averred that there are two reasons for delay of the applicant to seek for the necessary prayers on time, first; the applicant was delayed in getting copies of the proceedings, and second; presence 

of illegalities. These reasons are also reflected in the applicant's counter affidavit.

On the first reason of delay in getting necessary copies, the applicant's counsel did not dwell much on that. Even the affidavit of the applicant does not give clear explanation on how the applicant was delayed in getting the said copies. It is briefly shown that a copy of proceedings which was signed by the Hon. Registrar on 15/03/2022 was availed to the applicant on 13/09/ 2022.

On the reason of illegality, the counsel argued that, the High Court [Hon. Masoud, J] refused to grant the order of revision in favour of the applicant simply because it was imperative to file a fresh suit while Order XXI, Rule 62 of the Civil Procedure Code Cap 33 does not mandatorily dictate so. He maintained that, the Hon. Judge's emphasis was full of illegality as the only way of nullifying the existing judgment was to nullify the judgment and proceedings of the Ward Tribunal so that both parties can be heard on merits. To buttress his submissions, he cited the cases of **Theresia Mahoza Mganga vs. The Administrator General (RITA), Civil Application No. 85 / 2015** (Unreported) and **Tanzania Port Land Cement Ltd vs. Khadija Kuziwa Civil Application No. 437/01 OF 2017** (Unreported).

He went on to submit further that, the applicant has footed a lot of costs in buying the plots, surveying and building the house, therefore, if the situation of preventing her from defending her property will persist, then she is going to encounter gigantic loss unfairly and that also is illegality point of view. The applicant prayed for this Court to grant the application

Alles

with leave to file her application for certificate on point of law so that justice can be dispensed and administered, and with costs.

Submitting in rebuttal, Mr. Peter R. Madaha, the 1st respondent's counsel opposed the application, first by raising the issue of competence of the application before this Court. He argued that so to speak, the Application is *res judicata*, this Court is *functus officio*, and the matter has been taken by event and it abuses the Court process as it has had been determined by *Goba* Ward Tribunal and Kinondoni District Land and Housing Tribunal at Mwananyamala. He cited the cases of **Peniel Lotia vs. Gabriel Tanaki & Others [2003] TLR 312** and that of **Malik Hassani Suleiman vs. S.M.Z [2005] TLR 236** respectively.

The learned counsel went on to submit that, the issue of ownership of the landed property had already been heard and determined by the *Goba* Ward Tribunal in Land Application No. 95 of 2007 and the 1st respondent was declared the lawful owner of the disputed land. Furthermore, the 1st respondent filed an application for execution in Land Application No. 236 of 2007 at Kinondoni District Land and Housing Tribunal at Mwananyamala, Dar es salaam before Hon. Kaare-Chairman which was granted and Court brokers Vumilia Auctioneers and Kabanga General Business (T) Ltd were appointed by the Court to perform the work on the 16th July, 2008 which mark an end of the dispute between the parties on the disputed property.

On the reasons for the delay, the counsel for the 1st respondent submitted that, on failure by the applicant to account for each day of delay, the application be refused and no good cause has been shown by the

Alb.

applicant to warrant the grant of the application by this Court. He prayed for the application to be dismissed with costs.

The 2nd respondent who had no legal representation, supported the application. He prayed that, the application be granted so that the applicant can be heard for the purpose of defending her house which was demolished unfairly.

In his short rejoinder, the applicant's counsel stressed that, the 1st respondent's submissions are misconceived as she is raising new concept of *res judicata*, which does not feature in the pleadings.

He contended that, the refusal of the High Court (*sic*) [Hon. Masoud, JJ] made the applicant aim at knocking the doors of the High Court to apply for leave on certificate of law as the case originated from the Ward Tribunal but the applicant was time barred and hence, she started by filing this application for extension of time within which to file application for leave to appeal to Court of Appeal (*sic*). The applicant reiterated her prayers.

Having carefully considered the submissions from both parties, it is my view that the pertinent issue here is whether the applicant has established sufficient cause(s) for this Court to enlarge time to file the application for certificate on points of law in order to lodge an appeal before the Court of Appeal.

As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. The following guidelines may be formulated:- *Alls.*

- 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.*
- d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

This stance was stated in the famous case of **Lyamuya Construction Company Ltd vs. Board Of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) at page 6 & 7.

As it is gleaned from the applicant's submission in chief and the applicant's affidavit in support of the application, the applicant based her application on two causes, first on delay in getting copies of proceedings and drawn order of impugned decision and second on illegalities supposedly apparent on the face of record.

Beginning with the first reason, as observed earlier, there is no much explanation both in the affidavit and in written submissions by the applicant on how the same was delayed in getting the said copies. It is shown that the proceedings were signed by the Deputy Registrar on 15/3/2022. The applicant claims that the same was availed to her on 13/9/2022. There is no proof on whether the applicant requested for the said copies and when the same were requested.

Going through the records, it is clear that the impugned ruling was delivered on 11/01/2022, the Drawn Order was extracted on 09/02/2022 and the proceedings were certified and signed on 15/03/2022. *ALLs*

This Court has encountered difficulty to believe on mere claims by the applicant that a copy of proceedings was availed to her on 13/9/2022. Surprisingly, this claim does not even feature in the applicant's affidavit but only in the written submission. There is no attached receipt of payment fee or the requesting letter or even proof of follow ups to the Court purportedly done by the applicant.

Even if the Court will take the applicant's claim as it is i.e. she was availed with requisite copies on 13/9/2022, the applicant and her advocate failed to account for the period of **twenty-two (22) days** from the date of the issuance of the copy of proceedings to the date of filing of this application i.e. 13/09/2022 to 06/10/2022. It is trite law that the applicant has to account for each day of delay.

Having said so, I have no other option than to fully subscribe with the 1st respondent's counsel submission that the applicant has not accounted for each day of delay, consequently, the applicant's ground for delay is baseless and unfounded.

Regarding the ground of illegalities, it has been held in mountain of precedents that, where illegality exists and pleaded as a ground, the same constitutes sufficient cause for enlargement of time. (See the case of **Lyamuya Construction Company Ltd** (*supra*) which with approval, cited the case of **The Principal Secretary, Ministry Of Defence And National Service vs. Devram Valambhia [1992] TLR 387** to that effect.

However, it is also well established through a string of authorities that the alleged illegalities should be apparent on the face of record. One of these authorities is the case of **Ngao Godwin Losero vs. Julius**

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Mwarabu, Civil Application No. 10 of 2015 CAT Arusha (unreported), where it was observed that the illegality of the impugned decision has to be clearly visible on the face of the record.

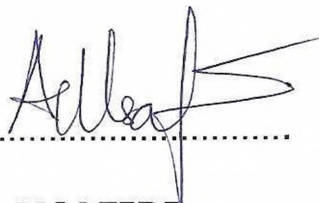
My scrutiny of the ruling in Land Revision No. 14/ 2021 [Hon. B.S. Masoud, J], as to the alleged illegalities, indeed, they are not on the face of the record rather they require a long argument. (See paragraphs 4, 5, 6, 7 and 8 of the affidavit deponed by the applicant hereof). I must therefore conclude that, the applicant has failed to convince this Court that, there are illegalities apparent in the impugned decision to warrant an extension of time. The purported illegalities invites long drawn arguments on the matter hence the same cannot be entertained.

I find that the alleged illegalities are not apparent on the face of impugned decision in Land Revision No. 14 of 2021 and therefore untenable in law. More so, the case of **Peniel Lotia** and **Malik Hassani Suleiman** cited herein above by the applicant are distinguishable and of no effect to the present application.

It is for the above reasons that, I dismiss this application in its entirety. I give no order for costs.

Order accordingly.




A. MSAFIRI
JUDGE
15/02/2023