

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

MISC. LAND APPLICATION NO. 27368 OF 2023

(Arising from Land Application No. 320 of 2020, Kinondoni District Land and Housing Tribunal)

AHMED ISLAM MEREY.....APPLICANT

VERSUS

HUMUD ALI SALUM.....1ST RESPONDENT

WILLHEM SYLVESTER ERIO.....2ND RESPONDENT

AHMED ABDALLAH KARAMA.....3RD RESPONDENT

RULING

18th to 26th March, 2024

E.B. LUVANDA, J

This is an application for extension of time within which to file a revision against the judgment of the Tribunal in the above captioned matter, which was delivered on 27/01/2020.

In the affidavit in support of this application, the Applicant named above grounded that he was not a party in that application; at the time when judgment was delivered he was abroad in the United Kingdom; while abroad, on 11/09/2023 he was informed by his young brother one Khamis Juma Mayala regarding existence of the impugned judgment; the Applicant

asserted to have travelled back in September 2023 met his lawyer who told him the impugned judgment is marred with illegality, where he lodged an application for extension of time on 18/09/2023 Misc Land Application No. 599/2023 which was struck out on 30/11/2023 for reason that it was *res judicata*, but argued he was not afforded an opportunity on this point of *res judicata*. He asserted to have been advised by his lawyer that the remedy after his application was adjudged *res judicata* by this Court is to file proper application.

The First Applicant filed a counter affidavit stated that the Applicant did not attach any document from alleged Khamis Juma Mayala. He stated that the Applicant was impleaded as the Fourth Respondent in Revision No. 1 of 2023 which was before this Court and he filed a counter affidavit on 14/03/2023 as per annexure HW-3. He asserted that the Applicant did not attach visa for travelling to the United Kingdom, nor attached a document for travelling back to Tanzania in September 2023. He stated that Misc. Land Application No. 599 of 2023 was struck out for being *res judicata*, and that the remedy was for the Applicant to appeal against it.

In reply to the counter affidavit, the Applicant stated that at no material time he authorized any person to swear an affidavit on his behalf, that Revision

No. 1/2023 proceeded *ex-parte* against him and the purported counter affidavit was not acted upon.

The Second Respondent had appeared and expressed his willingness not to participate the proceedings. The Third Respondent did not file a counter affidavit nor entered appearance, hence the duo were deemed to have forfeited their right to be heard.

Mr. Mussa H. Daffa learned Counsel for the Applicant submitted that they have raise a point of illegality for the reason that the Applicant's right to be heard was violated while he had interest over the disputed land. he submitted that it is a settled rule that illegality is a good ground for extension of time, citing **VIP Engineering and Marketing Limited and Two Others vs Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 CAT.

In reply, Mr. Ndanu Emmanuel learned Counsel for the First Respondent submitted that this application is *res judicata* and this Court is *functus officio* following the decision of Honorable Mwenegoha, J in Misc. Land Application No. 599 of 2023 lodged by the Applicant after this Court dismissed the application for Land Revision No. 1 of 2023 where the Applicant was a party.

On rejoinder, the learned Counsel for the Applicant submitted that in his affidavit he made clear that the matter before Honorable Mwenegoha, J was strike out as opposed to dismissal as argued by the learned Counsel for First Respondent.

Strictly speaking this application is doomed to fail and costs ought to be shouldered to the Counsel for Applicant. This is because in the affidavit in support, the Applicant grounded that Misc. Land Application No. 599 of 2023 which was filed by the Applicant, was struck out for being *res judicata*. Surprisingly the Applicant asserted to have been advised by his Counsel that a recourse was for the Applicant to file a proper application. This advice was indeed perverse and professionally misleading. As alluded by the Applicant in his counter affidavit, that the remedy was for the Applicant to appeal against it. An argument of the learned Counsel that it was struck out and not dismissal, is a misconception. To my view, those ought to be grounds of appeal and does not justify reversal to the same court seeking the same redress over the same grounds.

Number two, the Applicant, alleged to have been notified on 11/09/2023 by his young brother one Khamis Juma Mayala regarding existence of the

impugned judgment. But the purported Khamis Juma Mayala did not make any affidavit to support this fact.

Number three, the Applicant allege to have travelled abroad to the United Kingdom and travelled back to Tanzania in September 2023 for among other business, to attend this matter. However, no travelling document (passport or visa), itinerary or boarding pass was attached to vindicate this fact. This might be a reason for the First Respondent to accuse the Applicant for telling lies on broad day light.

To my view staging this application was none other than an abuse of court process. No wonder that is why the Second Respondent who is a layperson snubbed participation in this litigation and opted to walk out.

The Application is dismissed. The Applicant is ordered to foot all costs of this application to the First Respondent.



E. B. LUVANDA
JUDGE
26/03/2024

- Ruling delivered in the presence of Mr. Mussa Daffa learned Counsel for Applicant, Mr. Hemed Nasoro learned Counsel holding brief for Mr. Emmanuel Ndanu learned Counsel for First Applicant and in the absence of the Second and Third Respondent.



E. B. LUVANDA
JUDGE
26/03/2024