

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

**MISC. LAND APPLICATION NO. 2243 OF 2024**

(Originating from Land Application No. 253 of 2019, Ilala District Land and Housing Tribunal)

**KIANGWA TRADING COMPANY.....1<sup>ST</sup> APPLICANT**  
**ABDUL MOHAMED KITUNZI.....2<sup>ND</sup> APPLICANT**

***VERSUS***

**MUZINA ALAWI IDARUS.....RESPONDENT**

**RULING**

5<sup>th</sup> to 16<sup>th</sup> April, 2024

**E.B. LUVANDA, J**

This is an application for extension of time within which to make an application for revision of proceedings dated 2/12/2019 and the *ex-parte* ruling or order for injunction dated 4/12/2019 in respect of the above captioned land application.

In the affidavit in support, the Applicant grounded that on 2/12/2019 he did not attend for reason that he travelled to Bukoba to attend burial ceremony of his beloved brother and the information was conveyed to the Tribunal by one Mr. Amir Hassan. He stated that the impugned proceedings and ruling are tainted with illegality for reasons that he was denied a right to be heard

and that there was no proper application for injunction. The Applicants made a long narration of facts touching the merit of the matter and intended revision itself.

In the counter affidavit, the Respondent noted a fact that on 2/12/2019 the Applicants did not attend. However, dispelled the argument of illegality. He further stated that the Respondent filed an application for execution which was granted after the Applicants had failed to show cause. He stated that the delay is inordinate and the Applicants have been negligent in pursuing their rights. He further stated that revision stand no chance of success. He stated that the order dated 2/12/2019 was for further closure of the suit premises. He stated that following a complaint by the Applicants, on 30/1/2020 the Tribunal ordered the suit premises to be opened for the First Applicant to access and take documentations for preparation of their defence, then the factory was re-closed.

In reply to the counter affidavit, the Applicants stated that there was no proper application, neither chamber summons nor affidavit to move the chairman for injunctive orders on 2/12/2019; the Applicants was absent creating an illegality of failure to be heard before the injunctive order was issued. They stated that on 30/1/2020 after their complaint that they were

unable to proceed with trial following closure of the suit premises in their absence, the Tribunal did not show any sign of opening the factory nor hearing the Applicants as to why the factory should not be opened.

Mr. Benedict Archard Mutta learned Counsel for Applicants submitted that on 2/12/2019 the Second Applicant travelled to Bukoba for burial ceremony, where the Tribunal without being moved with a proper application for temporary injunction by way of chamber summons and affidavit and without issuing any notice to the Applicants, proceeded to grant the *ex-parte* order for injunction to close the Applicants' factory within the main application. He cited the case of **Mwanza City Council vs Alfred Wambura**, Civil Revision No. 1 of 2022 HC Mwanza. Also cited **Juto Ally vs Lukas Komba & Another**, Civil Application No. 484/17 of 2019 CAT, for a proposition that illegality of the impugned decision constitutes sufficient reason for extension of time.

In reply, Mr. Stephen Mosha and Frederick Mpanju learned Advocates for the Respondent submitted that on 2/12/2019 the Tribunal was notified by one Amir Hassan that the Applicant travelled to Bukoba for burial ceremony and prayed for an adjournment which was not contested by the Respondent, whereby the Tribunal *suo-motto* made an order for closure of the factory.

He submitted that during the entire trial, the Applicants never sought for the order of closure to be lifted or vacated until the trial Tribunal entered judgment and decree in favor of the Respondent. He submitted that on 30/1/2020 when the case was scheduled for hearing, no prayer for re-opening or lifting or vacating the order was made by the Applicants rather prayed to be allowed access into the factory so that he can take documents for his defence. He distinguished **Mwanza City Council** (supra), arguing therein the revision was initiated by the Court itself and there was an application for injunction which was registered. He submitted that herein the order was made by the Tribunal *suo motto*, there was no application for injunction, nor prayer of injunctive orders, arguing the Applicants cannot complain for existence of application for injunction or injunction order. The learned Counsels made a long submission regarding tenability of the intended revision, vis-à-vis the right of appeal.

On rejoinder, the learned Counsel for Applicants submitted that the Respondent raised preliminary objections in their reply without there being any notice of preliminary objection and without leave of the Court. He submitted that the concern on tenability of the present application is

misconceived and prematurely, arguing what is before the Court is an application for extension of time.

To my view, this application will fail for two reasons. One, it is in record of the Tribunal proceedings (annexure A2) to the affidavit, that on 21/10/2019 the Applicants were ordered to present their written statement of defence and the matter was then scheduled for mention on 5/11/2019. On 5/11/2019 the Applicants defaulted to appear neither filed their written statement of defence. On 2/11/2019 the Applicants again defaulted to appear, for an excuse that the Second Applicant was bereaved, it is when the Tribunal closed the suit premises on its own accord *proprio motu* and scheduled the matter for hearing *ex-aparte* on 30/1/2020. On 30/01/2020 the First and Second Applicant appeared before the Tribunal and did not seek for re-opening up of the suit premises rather their complaint was focused on access for procuring documentations for purpose of trial, which was allowed by the Tribunal. Thereafter the Applicants attended without fail save for a single day, participated the trial including tendering their defence up to 14/12/2021 when the matter was scheduled for delivery of judgment on 18/1/2022.

Throughout the trial and after delivery of judgment the Applicants did not complain on the alleged closure. On 3/08/2023 the Tribunal issued orders

for the Applicants to be evicted from the suit premises, as per the ruling and drawn order annexure A4 to the affidavit.

At any rate this application for extension of time to file a revision of an order issued by the Tribunal *suo motto* to close the factory on 2/12/2019 more than four years ago, is an afterthought and overtaken by events.

Two, the Applicants failed to account for the delay of four years and two months counting from when the impugned order was made on 2/12/2019 to 2/2/2024 when this application was filed. The alleged illegality even if is there, cannot be entertained at this stage, while the Applicants connived and condoned it for the entire period of four years plus.

The Application is dismissed with costs.



E. B. LUVANDA  
**JUDGE**  
16/04/2024

Ruling delivered in the presence of Mr. Benedict Archard Mutta learned Counsel for First and Second Applicants; Mr. Frederick Mpanju learned Advocate for the Respondent.



E. B. LUVANDA  
**JUDGE**  
16/04/2024