

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

**MISC LAND APPLICATION NO. 629 OF 2023**

(Arising from the Land Appeal No. 45 of 2018 before  
Ilala District Land and Housing Tribunal)

**MARY ASANGALWISYE MWATONOKA.....APPLICANT**

***VERSUS***

**DENKIS MARIKO.....1<sup>ST</sup> APPLICANT**

**MICHAEL CHEGERE MATIKO.....2<sup>ND</sup> APPLICANT**

**RULING**

22/01/2024 to 14/02/2024

**E.B. LUVANDA, J**

The Applicant named above is seeking for extension of time to file an application for revision.

In the affidavit in support of the application, the Applicant grounded that the delay was attributed to technical delay for reason that she was busy prosecuting in competent suit Land Application No, 176/2021 at Ilala District Land and Housing Tribunal from May 2021 to 17/07/2023. The Applicant also pleaded that the decision of the ward Tribunal and appellate Tribunal are tainted with irregularities, in that the Ward Tribunal had no jurisdiction over the matter and the appellate Tribunal condemned her unheard by upholding the decision of the

Ward Tribunal without taking into consideration of the fact that the Applicant ought to be joined as was directly affected by the decision.

In the counter affidavit, the First Respondent stated that Land Case No. 167/2021 was instituted maliciously and without cause. He stated that the Applicants affidavit shows negligence and sloppiness on her side, arguing the delay was inordinate.

Mr. Lutufyo Mvumbagu learned Counsel for Applicant submitted that after being aware of the decision of the Ward Tribunal, among other measures, the Applicant mistakenly but in good faith vigilant prosecuting incompetent suit, Land Application No. 167/2021 before Ilala District Land and Housing Tribunal, which was struck out on 17/07/2023. Thereafter the Applicant embarked on making follow up of the ruling of the Tribunal which was vital in preparation and filing the present application. The learned Counsel grounded it as technical delay, argued for it to be considered as sufficient cause for the Applicant to be granted extension of time to apply for revision, citing **Morris Shepea vs. Rafael Lenesira Mollel**, Misc. Land Application No. 45/2021 HC Arusha, Hon. Kamzuro, J. He also cited **Attorney General vs. Oysterbay Villas Limited**, Civil Application No. 299/16 of 2016 CAT, for a proposition that the apex Court took a view that forty five days was not inordinate in findings a lawyer, preparation and filing the application.

On the ground of illegality, the learned Counsel submitted that the appellate Tribunal upheld the decision of the Ward Tribunal without taking into consideration the fact that the later it lacked the requisite pecuniary jurisdiction to entertain the dispute, citing section 15 of the Land Dispute Courts Act, Cap 216 R.E. 2019. He submitted that the Applicants sale agreement depict the suit property exceed three million shillings. He submitted that the appellate Tribunal upheld the decision of the Ward Tribunal without taking into account a fact that the said decision is going to affect the Applicant who was not a party to the suit, arguing it denied the Applicant the right to be heard. He submitted that the appellate Tribunal ought to nullify the same and order the Ward Tribunal to join the Applicant for her to be accorded a chance to be heard. He cited the case of **National Housing Corporation vs. Tanzania Shoe Company & Others, [1995] TLR 251.**

In reply, the First Respondent submitted that the Applicant has not advanced sufficient reason to warrant the grant of extension of time. He submitted that filing incompetent suit and its subsequential dismissal does not amount to sufficient reasons for delay. He submitted that this application was filed on 25/09/2023 after 69 days of delay counting from 17/07/2023 when the mentioned application was dismissed. He cited the case of **Rutunda Masore**

**vs. Maraf Motors Ltd**, Labour Revision No. 7/2014, for a proposition that the Applicant ought to account on each day of delay.

Regarding the illegality, the First Respondent submitted that the same is misplaced because it was not clearly apparent on the face of the impugned decision, citing **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10/2015. He submitted that in the affidavit there is no any legal argument to support that the Ward Tribunal lacked jurisdiction. He submitted that it was not easy to enjoin the stranger who owned nothing over the suit land without justification by hiding herself on the allegation that she was denied the right to be heard. He submitted that the Applicant failed to establish sufficient reason to warrant grant of extension of time.

On my part I will start with the ground of illegality. To my view the illegality pointed out by the Applicant that she was denied a right to be heard by both tribunal below, is apparent on the face of records in respects of the decisions of both tribunals. In the decisions of the Ward Tribunal at a front page, show vividly that the complainant therein who is the First Respondent herein, lodged a complaint against the Second Respondent herein, accusing the latter to have disposed a farm of the former to a third party, who at the time of suing, a house was already constructed on a suit land. At a verdict, the Ward Tribunal ruled the third party to be evicted. At the appellate Tribunal front page of its decision

it is obvious fact that someone who is not a party was on actual occupancy of the suit land, at the time of litigating. The appellate Tribunal on its verdict on appeal, ordered the Second Respondent herein along with his so called agent to vacate from the suit land. Thereafter the appellate Tribunal issued an order and warrant of execution directing the Second Respondent and his agent to be evicted.

To my view, in so far from initial stage of inception of lodging a complaint at the Ward Tribunal and later at appellate and execution, the tribunal below were made aware that some was under actual occupancy of the suit land and developed the same, to me I take it as a fatal illegality in so far the Applicant was not invited to the proceedings and eventually condemned unheard for apparent reasons. The apex Court was faced with a similar situation in the case of **The Attorney General & Another vs. Dhirajilal Walji Ladwa & Four Others**, Civil Application No. 640/16 of 2023, where it held that failure to invite the Applicants therein to the proceedings was a fatal irregularity.

On the basis of that ground of illegality alone, I held that the application is meritorious. The Applicant is granted an extension of fourteen days to file the application for the intended revision.

The application is granted. No order for costs.



E. B. LUVANDA  
**JUDGE**  
14/02/2024

Ruling delivered in the presence of Mr. Lutufyo Mvumbagu learned Counsel for Applicant, the First Respondent and in the absence of the Second Respondent.



E. B. LUVANDA  
**JUDGE**  
14/02/2024