

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

MISC. LAND APPLICATION NO. 5069 OF 2024

(Originating From Application No. 43 of 2009, Ilala District Land and Housing Tribunal)

ASHURA JUMA KITERI (The Administratrix
of the Estate of the Late Said Salum Mshana).....**APPLICANT**

VERSUS

PRISCA JOEL MJEMA.....**RESPONDENT**

RULING

13th to 24th May, 2024

E.B. LUVANDA, J

This is an application for extension of time within which to lodge an appeal against the decision of the Tribunal in the above captioned matter, dated the way back on 8/04/2013. In the affidavit in support, the deponent grounded reasons for delay to have been attributed by lack of knowledge on the existence of the impugned decision, until after the demise of her husband on 24/04/2018; ailment and surgery as per medical chit annexure P3 to the affidavit; pursuing up the matter to the Minister for Lands, Housing and Human Settlement following a call and invitation for people entangled with land disputes in 2020; liaising with the Municipal Land Officer, hamlet council Machimbo-Segerea and Registrar of Titles in pursuit of and collecting the

title deed; economic hardship and mobilizing capital to engage the lawyer; illegality on the impugned judgment.

In the counter affidavit, the Respondent asserted that the Applicant was aware of the proceedings of Land Application No. 43 of 2009 for explanation that on the day of service of summons the Applicant was at home and she refused receiving summons. She stated that the Applicant was capable financially as she was able to pay all fees to obtain the title deed. She stated that there is know (sic) illegality on the face of records.

In a reply to the counter affidavit, the Applicant denied the above facts.

Mr. George Joseph Bega learned Counsel for Applicant submitted that the Applicant was stressed by the demise of her husband thereafter was seriously sick and that she started to secure capital for treatment. He submitted that the Applicant was hospitalized at Kisarawe District Hospital and undergone surgery for uterine fibroids/leiomyoma/uterine myoma. He submitted that recovery of surgery took sometimes because of depression following demise of her husband, and at the same time thinking of raising her children. He submitted that the Applicant encountered a lot of economic hardships towards engaging legal representation (lawyer), attributed by the demise of her husband and remained widow struggling for the survive of her

family. He submitted that the delay was not caused by negligence, arguing the Applicant was seeking legal assistance, thereafter got a relief to the Minister for Lands, Housing and Human Settlement where the whole process was guided by the Land Officer who was aware of the legal implication. He cited Article 13(6) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time; **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002 CAT, on a proposition of fair hearing and legal representation. He submitted that the illegality is pegged on the right to be fairly and fully heard, argued the key witness was not heard, cited **Mbeya-Rukwa Autoparts & Transport Ltd vs Justina George Mwakyoma**, Civil Appeal No. 45 of 2001.

In reply, Mr. Noelina Bippa learned Counsel for Respondent submitted that the Applicant after receiving summons for execution from the Respondent, it is when she prays for this Court to extend time for her to lodge an appeal after ten years and eleven months from the delivery of the judgment on 8/04/2013 to the date of filing this application on 11/03/2024. She cited **Lyamuya Construction Company Limited vs The Board of Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 02 of 2010 CAT, for a proposition that it set perimeters for extending time being: sufficient reasons for extending time, accounting every day of delay,

prove that the delay is not inordinate, show diligence not apathy and negligence in the prosecution of the action. She submitted that the Applicant has neither accounted for delay of ten and eleven months or to show the delay is not inordinate. She submitted that the Applicant's reasons for delay are based on sickness; financial constraints or economic difficult and illegality. She submitted that according to annexure P-3 show the Applicant attended radiologist on 27/11/2018. She submitted that it is not known as to when the Applicant fall sick, for how long, where surgery was done, for how long was under bed rest. She cited the case of **Masalu Kazinza vs Christina Boniface (Administratrix of the Estate of the Late Boniphace Sanyenge)** [2022] TZHC 9988. She submitted that from 24/04/2018 when her husband met demise to 27/11/2018 when she attended medication, the Applicant had a span of five months to file this application, arguing the Applicant relaxed at home. She queried as for how long the Applicant was stressed over her husband's death. She cited **Esther Lohay vs Esther Manonga** [2022] TZHC 13180. She submitted that financial constraint is not a sufficient cause to extend time, citing **Yusuf Same** (supra). She conceded a fact that the Applicant is a widow, but queried as to how such widow with enough fund to follow up with the Ministry for Lands to obtain a title deed, also retained an advocate to institute

two applications, including the instant application the other one before the Tribunal. She argued the Applicant to have sought legal aid within time and prosecute her appeal. She cited **Elizabeth Seth Kimbina vs Scola Samwel Mambeleo** [2023] TZHC 16203. She submitted that a claim for illegality must be on the face of records not which require Court scrutiny. She submitted that there is no reason suggesting that the Applicant right to be heard was violated, arguing the inordinate of the Applicant and non-appearance waived her rights claimed today.

According to the accounts of chronological events as captured in the Applicant's affidavit, suggest the Applicant was acquainted with the facts of this case including the impugned judgment on 24/04/2018 after the demise of her husband and during mourning. The Applicant pegged the reasons for delay to have been attributed by a series of events ranging from attending funeral and mourning of her husband, ailment while still upcountry and attending medication. But no specific time or span was accounted for each event. However a medical report from Kisarawe District Hospital dated 27/11/2018 annexed to the affidavit, suggest the Applicant attended at the facility on 26/11/2018, and the in-patient file records annexed to the affidavit do not indicate exact or specific date under which the Applicant was hospitalized at the facility, rather is a mere prescription and medical plan.

According to the affidavit, the deponent stated that while was contemplating to follow up the matter, on 2020 the Applicant was able to attend public hearing for people with concerns and entanglement of land disputes organized by the Minister for Lands, Housing and Human Settlements. Thereafter was able to liaise with the Municipal land Officer, hamlet council at Machimbo-Segerea checking any encumbrance attached to the suit land, for the procedure of processing title deed and eventually picking or collecting the title deed from the Registrar of Titles. While the Applicant is saying to have been busy shutting all long to the hamlet office to check if the suit property was encumbered, seemingly she was in forgetful that the way back on 24/04/2018 she was acquainted with facts showing that there was a decision which declared the Respondent as the rightful owner of the suit property. I am saying she was aware of the encumbrance, because the first correspondence on her process for the title deed was crafted by the Ilala Municipal Director on 22/08/2019, showing that survey was already done, drawing plan were in place, three sets of draft title deed were awaiting endorsement, signature and sealing by the Commissioner for Lands, importantly the Applicant had already paid all fees and payment due, as per the correspondences attached to her affidavit. A title deed suggest was issued by the Registrar of Titles on 31/01/2020 as per copy of title deed

annexed to the affidavit. The implication of this fact, is that the affidavit of the Applicant is full of untruth facts. This is because on the year 2020 with unspecified date alleged to have been abandoned to follow the matter, and adopted the move of public hearing in 2020, already a title deed was prepared and signed by the Commissioner for Lands.

Another implication, the alleged prolonged mourning, stress after demise of her husband, ailment and financial constraint are all swallowed by the move of the Applicant to attend public hearing and heeding to the invitation of the Minister for Lands along procedures for obtaining a title deed which involved movements/shutting and fundings. In other words, after 2020 those factors were no longer viable or valid. This is because the Applicant was able to hustle around offices for the Minister for Lands, Municipal Land Officer, hamlet office, Registrar of Titles on her own, along meeting the obligation of paying the invoices raised for processing title deed.

In other words, the whole of 2021, 2022, 2023 the Applicant remained idle resting at home until on 11/03/2024 when she filed this application. Therefore, the period of these three years was not accounted for.

In that regard, the argument of the learned Counsel for Respondent that this application was filed after the Applicant was served with summons and notices of execution of the decree, is a valid one.

The alleged illegality for reasons that the Applicant was denied a right to be fairly and fully heard or to call key witness, is imaginary one, cannot be said to be apparent on the face of records. The right to the so called fair and full hearing is subject to conditions. For instance, in the counter affidavit, the Respondent asserted that the Applicant was aware of the proceedings of Land Application No. 43 of 2009 for explanation that on the day of service of summons the Applicant was at home and she refused receiving summons. The Applicant did not file a reply to counter this fact. Above all, the alleged right to be heard was not established in the supplementary affidavit, where a ground of illegality was pleaded.

In view of the above, I rule the application being wanting in merit.

The Application is dismissed. However, I spare the Applicant to foot costs.



E. B. LUVANDA
JUDGE
24/05/2024