

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 2788 OF 2024

(An application for extension of time to file revision against the Judgment and drawn Order in Land Appeal No. 29 of 2017 in the District Land and Housing Tribunal for Kinondoni District, Hon. Mbilinyi Chairperson).

LATIFA YAHYA SAID APPLICANT

VERSUS

IBRAHIM HASSAN MSHANGAMA1ST RESPONDENT

ASHURA RAMADHANI SHEMDOE2ND RESPONDENT

31/5/2024 & 28/6/2024

RULING

A.MSAFIRI, J.

This is a Ruling on an application filed by the hereinabove applicant seeking for extension of time within which to file application for Revision against the Judgment and drawn Order in Land Appeal No. 29 of 2017 before the District Land and Housing Tribunal for Kinondoni District (DLHT) by Hon. Mbilinyi, Chairperson. The appeal originates from Maombi Na. 131 ya 2016 in the Ward Tribunal for Makumbusho Ward.

The application was made under Section 14(1) and (2) of the Law of Limitation Act Cap 89 [R.E. 2019], and was filed by way of chamber *Allo*

summons supported with two affidavits, the first one deponed by Latifa Yahya Said (the applicant) and the second one deponed by her advocate, Robert R. Rutaihwa. The application was opposed in the counter affidavit deponed by Ibrahim Hassan Mshangama (the 1st respondent), whereas the matter proceeded exparte against the 2nd respondent upon proof of service by publication in Mwananchi News Paper dated 06/4/2024.

The hearing was made by way of written submissions whereas, the applicant was represented by Mr. Robert Rutaihwa, learned Advocate while the 1st respondent appeared in person.

On his submission Mr. Rutaihwa prayed to adopt the contents of the two affidavits in support of the application. He urged this court to extend time for the applicant to file application for revision on the ground that there were illegalities in the decision of Makumbusho Ward Tribunal in Maombi Na. 131 ya 2016 and the subsequent appeal before the DLHT. He submitted further that the applicant was not a part in proceedings of both Tribunals, neither was she made aware of the proceedings, and decisions thereof despite the fact that she was in actual possession and registered owner of the suit property.

Mr Rutaihwa pointed that when there is a ground of illegality as pointed in the paragraph 27 (i) to (vi) of the applicant's affidavit, and paragraph *Alls.*

4 (i) to (vi) of the affidavit of Advocate Rutaihwa, the applicant needs not to account for each day of delay but the court has the duty to extend the time to see and correct such illegalities.

To cement his point, Mr. Rutaihwa urged this court to grant the application pointing out the position in the case of **Transport Equipment Ltd vs D.P. Valambhia** [1993] TLR 9 where the Court of Appeal stated that;-

"when the point at issue is one alleging illegality of the decision being challenged, the court has a duty even if it means extending time for that purpose to ascertain the point, if the alleged illegality be established to take appropriate measures to put the matter and the record right"

The advocate for the applicant stated that granting the application will enable the applicant her right to be heard through revision.

On reply, the 1st respondent submitted that, it is trite law that for this court to grant the application for extension of time, the applicant must establish that there are sufficient reasons for the court to exercise its discretionary powers to extend time.

He said that in the instant case the applicant has not accounted for the days for delay from 23/06/2021 when the last ruling in Application No. 709 of 2020 was delivered till on 13/02/2024 when this application was filed before this court. He urged the court not to grant time for extension

Alb.

of time for failure of the applicant to account for days of delay. To cement his point, he cited the case of **M.A. Suleiman and Sons Ltd & 2 Others vs. Registered Trustees of Anglican Church Tanzania**, Civil Application No. 93 of 2016 HC DSM Main Registry (unreported) where it was stated that the cause of delay of each day that passes must be explained.

On rejoinder Mr. Rutaiwa reiterated what was submitted in chief and further elaborated grounds of revision which are premature at this stage.

Having considered the rival submissions of the parties, I have gone through the two affidavits in support of application. The evidence in the said affidavits is that the applicant is claiming to be the legal owner of the house registered with reference No. KND.MBS/MBN.38/74, Mbuyuni area, Makumbusho within Kinondoni District (herein the suit house). She claimed to have purchased the suit house from now the 2nd respondent and occupied it.

That after purchase of the suit house, the now 1st respondent instituted a suit before the Ward Tribunal against the 2nd respondent claiming to be the owner of the suit house. The proceedings before Ward Tribunal went on between the 1st and 2nd respondents in absence of the applicant although she is the owner of the said house. That the Ward Tribunal

Alb

decided in favour of the 2nd respondent and the 1st respondent appealed to the DLHT where the appeal was granted in his favour. That from that time the applicant's ownership of the suit house was in jeopardy.

Glancing at paragraph 27 (i) to (vi) of the applicant's affidavit, and paragraph 4 (i) to (vi) of the affidavit of Advocate Rutaihwa, the illegality claimed is that the applicant, being the owner of the suit house, was not accorded the right to be heard as she was unaware of the ongoing proceedings between the parties.

It is my view that the applicant's raised issue of illegality is an *ipso facto* sufficient cause to extend time regardless of accounting for the days delayed. See in the case of **Grand Regency Hotel Limited vs Pazi Ally & 5 Others**, Civil Application No. 100/01 of 2017 where the court cited the case of **VIP Engineering & Marketing Limited and 2 Others vs. Citi Bank Tanzania Limited**, where the court stated that:

"It is therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 regard less of whether or not a reasonable explanation has been given by the Applicant under the rule to account for the delay".

Guided by the above principle which I believe it applies in the circumstances of the instant matter, I am convinced to grant the *Ally*.

application basing on the reason of illegality. The application is granted.
The applicant to file the intended application for revision within 21 days
from date of this Ruling.

Costs shall follow the events.

It is so ordered.



A. MSAFIRI
JUDGE

28/06/2024