

**IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA**

**MISCELLANEOUS LAND APPLICATION NO 31 OF 2019
FELICIAN MUHERE _____ APPLICANT**

VERSUS

DAVID MLAY _____ RESPONDENT

(Arising from the Decision and Orders of the District Land and Housing Tribunal Court for Mara at Musoma, Hon. Masao Chairperson, in Application No. 275 of 2016 dated 29.09.2017)

RULING

Date of last order; 30.01.2020
Date of Ruling; 13.03.2020

GALEBA, J.

This is an application for extension of time within which the applicant may file an appeal in order to challenge the ruling of the District Land and Housing Tribunal Court for Mara at Musoma in Land Application No. 275 of 2016 which ruling was delivered on 29.09.2017. The application generally attracted resistance from the respondent.

When the application came up for hearing, counsel for the respondent Mr. Baraka Makowe, offered a huge concession to the applicant in that he did not object to the grounds of delay between 29.09.2017 when the ruling to be challenged was delivered and 23.08.2018 when Miscellaneous Application No 1 of 2019 seeking the same orders as the present application was struck out by this Court, Hon. Kahyoza J. That was quite a commendable consideration by the respondent. The delay that remained unexplained therefore was from 23.08.2019 to 19.09.2019, when the applicant filed the present application for extension of time.

According to the applicant, he did not file this application in good time because the ruling of this Court, in Miscellaneous Application No 1 of 2019 was not accessed to him in time as he got it two weeks of its delivery that is two weeks after 23.08.2019. Thereafter, he filed this application on 19.09.2019 without undue delay, according to him. Mr. Makowe was not at all convinced by the submissions of the applicant. He submitted that he was at loss as to whether this Court can "deal with a matter that it cannot handle". He submitted that we must get to a point where, if a court makes a decision, each party to it must respect the decision passed. He promised to supply an authority contained in the High Court Digest of 1968 in supporting his point (which authority we did not receive). It was the argument of counsel that the submissions of the applicant have nothing to support because the fact that the ruling in Miscellaneous Application No 1 of 2019 was not accessed to him in time is not sworn in the affidavit and that the applicant did not account for any period of delay. He cited **CRIMINAL APPLICATION NO 102/13 OF 2018 JOSEPH MAGINGO VERSUS THE REPUBLIC CA IRINGA (UNREPORTED)** in support of his position. He also cited **CIVIL APPLICATION NO 8 OF 2011 HENRY MUYAGA VERSUS TANZANIA TELECOMMUNICATIONS COMPANY LTD CA MWANZA (UNREPORTED)** to support his argument that the applicant was supposed to account for each day of delay.

The issue that presents itself for resolution by this Court is whether this application merits to be granted in the circumstances. To start with, this Court is in agreement with Mr. Makowe, that as a matter of principle matters in Courts need to come to an end and in applications for extension of time the applicant needs not only to explain the period of delay whole sale but he must account specifically for each day of delay. It is also true that whatever the applicant submitted upon as the grounds of his delay were not contained in his affidavit supporting this application. Even if such

grounds were to be part of his affidavit, still its truthfulness would present questions which would not get answers easily. This is so because it is very unlikely, especially nowadays when the Court is at the peak of its efforts to build public trust that a ruling which is delivered after being typed and signed by a Judge could take two more weeks to be accessed to a party. The submission of the applicant on this aspect does not get support from reason. So the reasons for the delay as sought to be relied upon by Mr. Muhere to explain the delay are not acceptable in the circumstances. They are of his own making and they do not support any fact in his affidavit.

However, this application is supported by the affidavit of Mr. Muhere himself. The grounds advanced in the affidavit disclose reasons of delay between 29.09.2017 and 23.08.2019, which period has no dispute between the parties as earlier stated. The affidavit is silent on account of the period from 23.08.2019 to 19.09.2019. The affidavit is however loud as for its clause 15. That clause is not advancing any reason for the delay but it is a complaint based on the legality of the decision of the District Land and Housing Tribunal. That clause is to the following effect;

"15. That the applicant wants to challenge a point of law as to whether the principles of res judicata can apply two different subject matters."

A specific rebuttal to that clause in the counter affidavit is not coming out clear. In essence, at that clause, the applicant seeks to challenge as illegal the holding of the District Land and Housing Tribunal for not properly applying the principle of ***res judicata***. Although that clause does not have a long explanation as to what the applicant was up to specifically, but a thorough study of the file and the history of the complaint has it that there was a mix up and a misunderstanding of the land in dispute, and it all started with the evidence of a land Officer **DW2 ALEX SABO** whose testimony is contained at page 7 of the typed judgment in Land Application No.

11 of 2007 filed at the District Land and Housing Tribunal at Musoma. This is an application which was held to be **res judicata** the application sought to be challenged. This is what the Tribunal quoted as being the evidence of **MR. SABO**;

"DW2 Alex M. Sabo qualified himself as a Musoma Municipal Land Officer, he told the Court that Plot No. 16 Block 'A' Nyasho was allocated to one Idd Magessa in 1973 but now the file has been documents (sic) of one Anil Shah who began to pay property taxes from 2000 year (sic) to 2009. That on 22/05/2003 one Company called NOREN Enterprises of P. O. Box 74 Musoma applied for the suitplot in her letter dated 22/05/2003, but thereafter he got another letter from Michael Majura of Mukendo Garage of P. O. Box 813 Musoma written on 13/05/2008 informing the Municipal Council that plot No. 16 Block 'A' Nyakato area had been purchased by ANIL SHAH from Idd Magessa and he had obtained a right of occupancy since 1975."

That paragraph is a confusion as to which plot was allocated to Idd Magega and which Plot did he sell to Anil Shah. The above clause shows that Idd Magega was allocated a plot 16 'A' at Nyasho but he sold plot 16 'A' at Nyakato to Anil Shah. That issue did not end there. In the High Court at page one, the High starts;

"The dispute between the parties in this case is over ownership of a piece of land described as Plot No 16 Block 'A' Nyasho area within the Municipality of Musoma."

Later the Court continued at page 2;

"...Sometimes in 2007, the appellant applied to the Municipal Council to be allocated the suit plot which he described as Plot No. 16 'A' Nyakato instead of Plot No 16 Block 'A' Nyasho area..."

The Judgment of the Tribunal in Land Application No. 275 of 2016 which judgment the applicant is seeking extension of time to challenge, indicates that one of the arguments of the applicant in that matter was that the subject matter was not the same in Land Application No. 11 of 2007 and in Land Application No. 275 of 2016.

At page 2 of the Judgment in the latter case Mr. Mligo for the applicant is quoted at page 2 arguing to the following effect;

"He (Mr. Mligo) said in this case there is Felician Muhere Vs David Mlay and in the former case there were two respondents David Mlay and Anil Kumar Shah. So parties in that case are different from the parties in this case. He said further, the subject matter is different, in the previous case the dispute was on plot No. 16 Block 'A' Nyasho area and the plot in dispute in this case is plot No. 16 Block 'A' Nyakato area so res judicata can't apply."

It appears that the understanding of the applicant is that the Plots are different and the tribunal's and hopefully the respondent's was that despite the different names of the locations but the land or the plot is just one and the same.

This Court has no ability to tell who is right and who is not between the applicant and the tribunal on the number of plots, and indeed it does not have even mandate to probe into that for it would be venturing into the merits and demerits of the would be appeal in case there will still be courage to file it. In this case if the plots are two that is to say Plot 16 Block "A" Nyakato is different from Plot 16 Block "A" Nyasho as per the allegations of the applicant, there could be an illegality on the record of the tribunal. But if the plot is one, there would be none.

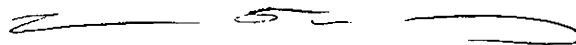
At this point this Court cannot ascertain that there is an illegality on the record of the tribunal, but there are chances that it could be there as per the discussion above. The reason why this application will be decided the way it will be decided is this; suppose that we do not grant this application when there is an illegality which can be established on appeal, what would we have done? The High Court would have permitted an illegality to subsist on the record of the tribunal. Because of that uncertainty, it is in this Court's assessment that it is better to allow the applicant to file an appeal and then find

that there is no illegality and dismiss it rather than retaining records of the tribunal with an illegality which as stated above, is a possibility.

Following that dilemma, presenting itself as discussed, this Court issues the following orders;

1. The applicant may file an appeal to challenge the decision of the Land and Housing Tribunal Court for Mara at Musoma in Land Application No. 275 of 2016 in (fourteen) 14 days from the date of this order.
2. According to the circumstances of this case it is fair that the applicant bears the costs of this application.

DATED at MUSOMA this 13th March 2020



Z. N. Galeba

JUDGE

13.03.2020