

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

MISCELLANEOUS LAND CASE NO 44/2019

**(Originating from Land Appeal No. 77 of 2017 District Land and
Housing Tribunal for Ruvuma at Songea)**

MAULIDI TWAIBU NGONYANI APPLICANT

VERSUS

MWANAHAMISI RASHIDI SANYALILA RESPONDENT

RULING

Date of Last Order: 27/08/2020

Date of Ruling: 31/08/2020

BEFORE: S.C. MOSHI, J

By way of chamber summons, the applicant, filed an application under section 14(1) of the Law of Limitation Act Cap.89 R.E 2002 and section 95 of the Civil Procedure Code, Cap. 33 R.E 2019 applying for the following orders;

1. An order granting leave to the applicant to file application for revision to this court out of time.
2. Costs of the application be provided for.
3. Any other relief this court deems fit to grant.

The application is supported by the affidavit of MAULID TWAIBU NGONYANI. Both parties appeared in person applicant, the application was disposed of by way of written submissions.

The applicant in his affidavit as well as in his submission stated that, the basis of application is that, Land Appeal Number 77 of 2017 was illegally dismissed for want of prosecution on the date it was scheduled for mention, that is on 14/2/2018.

He said that under Regulation 15 of the Land Disputes Court (District Land and Housing Tribunal) Regulations, 2003 the Tribunal had to dismiss the application for want of prosecution if the appeal was left unattended by the applicant for three months.

It was the applicant's contention that, it is a trite law that a case can be dismissed for various legally recognized grounds when it comes up for hearing not mention, he cited the case of **Shengena Ltd Versus**

National Insurance Corporation and Another, Civil Appeal Number 9 of 2008 Court of Appeal at Dar es salaam (Unreported).

He argued further that, dismissing an appeal on the date when the appeal was fixed for mention for the trial tribunal to ascertain the state of the records of the Ward Tribunal which were not brought to the District Land and Housing Tribunal was and is still a very serious illegality. In our jurisdiction the court as per the case of **Kalunga and Company, Advocates Versus National Bank of Commerce Ltd**, (2006) T.L.R has a duty even if it means to extend time for the purpose of ascertaining the point and if the said illegality is established in Revision application to take appropriate measures to put the matter and the record straight.

He stated that, the applicant has been innocently prosecuting Miscellaneous Land Application number 243 of 2018 as soon as Land Appeal Number 77/2018 was illegally dismissed, he filed an application with the view of challenging the decision to dismiss the said appeal. The application was decided against applicant's favor on 13/9/2019. Thereafter, the applicant without wasting much time believing that the dismissal order is illegal decided to file this application believing that this court have power to correct the errors committed by the appellate Tribunal.

The respondent didn't file a reply to the applicant's written submission.

I have carefully considered the submissions from both sides, the issue to be determined is whether the applicant has been able to advance sufficient reasons to justify leave to file application for revision out of time.

It is a settled principle of the law that an application for extension of time is entirely on the discretion of the court to grant or refuse it, this discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for doing so. See the case of **Yusuph Same and Hawa Dada Versus Hadija Yusuph**, Civil Appeal no 1/2002, Court of Appeal at Dar es salaam (unreported).

In the case at hand the applicant's reasons for this application is that the Tribunal illegally dismissed his Land appeal number 77 of 2017. In the case of the **Transport Equipment Ltd Versus D.P Valambhia**, (1993) TLR 91 it was held thus: -

*"In our view, **when the point at issue is one alleging illegality** of the decision being challenged, the court has a duty, even if it means extending the time for the purpose, to ascertain*

the point and if the illegality be established, to take appropriate measures to put the matter and the record straight”(emphasis is mine)


Therefore, I grant the application basing on the complaint of illegality, so the court can get an opportunity to consider whether Land Appeal Number 77 of 2017 was dismissed in accordance with the law.

That said, I allow the application. The applicant should file the intended application for revision within 14 days.

Each party to bear its own costs.

It is so ordered.

Right of appeal is explained to the parties.


S.C. MOSHI
JUDGE
31/08/2020

