

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

MISC. LAND APPLICATION NO. 97 OF 2019

*(Originating from the decision of the High Court of Tanzania, Misc. Land Appeal No 27
of 2010)*

VUSINDAWE LAVUYE APPLICANT

Versus

STEPHANO NAIGINA RESPONDENT

RULING

16th June & 20th August, 2021

MZUNA, J.

Vusindawe Lavuye, the Applicant herein, seeks for extension of time to review the decision of this court delivered on 20th December, 2012 (Massengi, J as she then was) for the reasons that the order that the matter should start afresh is legally un enforceable. Stephano Naigina, the respondent filed a counter affidavit opposing the application.

The background story is that the said applicant lodged appeal against the decision from the District Land and Housing Tribunal of Arusha in Land Case Appeal No. 86 of 2009 originating from Terati Ward tribunal. This court, vides Misc. Land Appeal No 27 of 2010 nullified the proceedings of both tribunals and ordered a retrial. The applicant claims that it is not practicable in the eyes of law for the said

Terati Tribunal lacked Pecuniary jurisdiction to entertain the matter. That the suit property involves 30 acres where as the Ward Tribunal's Pecuniary jurisdiction is Tshs. 3,000,000/-. Leave is hereby sought to enlarge time within which to file review of the decision of this court.

The applicant is well represented by Richard Evance Manyote, learned Advocate from Legal and Human Rights Centre while the respondent is represented by Christina Kimale, the learned Advocate.

The question to ask is, has the applicant demonstrated sufficient reasons for the delay?

Submitting on the substance of the application, Mr. Manyote adopted and sought to rely on his affidavit and contended that since he was in possession of the suit land and a trial de novo was ordered he relaxed till the respondent invaded and upon the advice he got from the Legal and Human Rights Centre he preferred an application for review but because he was out of time, he thus first preferred this application.

Mr. Manyote also stated that the genesis of this application is based on the practicability of the order of the High Court that the matter should be tried de novo by the same Ward tribunal which has no pecuniary jurisdiction to entertain the matter since the monetary value of the disputed land exceeds Tshs 3 million.

He sought extension of time based on the ground of illegality of the decision of the High Court, and portrayed that it was impossible for both parties to initiate a trial in respect of the disputed land without first correcting the issued order.

The learned counsel cited the case of **Lyamuya Construction Company Limited vs Board of registered Trustees of Young women's Christiana Association of Tanzania**, Civil Application No. 2 of 2010, **Principle Secretary, Ministry of Defence and National Service vs Devram Valambia** [1991] TLR 387 and the case of **Attorney General v. Tanzania Ports Authority**, Civil Application No. 87 of 2016. Both cases laid various principles to abide should a party seek for extension of time. He therefore prayed for the extension of time to file application for review.

Contesting the application, Mrs Kimale contended that the applicant has failed to demonstrate good cause for the delay. That he has failed to comply with all four conditions stipulated in the case of **Lyamuya** (supra), which includes:- That all days of delay must be accounted for; The delay should not be inordinate; The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; And that if the court feels there are other sufficient reasons such as illegality of the decision sought to be challenged.

According to Mrs Kimale, if the pecuniary jurisdiction did not befit the institution of the suit in the Ward Tribunal, then either party was at liberty to file a fresh suit in a court with competent jurisdiction. Mrs. Kimale further submitted that, there was no any illegality on the face of the issued order by the Court and prayed that, this court to find the application is devoid of merit thus be dismissed with cost. The applicant did not prefer any rejoinder.

The question to ask is, are there sufficient reasons warranting this court extend time for review?

Section 14(1) of the Law of Limitation Act Cap 89 R.E 2002 to which this application relates requires that court may upon "any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application". The cited case of **Lyamuya Construction Company Limited** (supra) is instructive in this respect. It was *inter alia* held from that case that: -
"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*

- c) *The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) *If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

Likewise, in the case of **Wambele Mtumwa Shahame vs Mohammed Hamis** – Civil reference No. 8 of 2010 CAT at Dar es Salaam (unreported). It was held at page 5 and 6 that, *"there are no hard and fast rule as to what constitutes a good and sufficient cause it is always a question of fact to be determined by the court according to the peculiar circumstance of the case."*

Mr. Manyole has relied on a point of illegality of the order issued by the High Court which ordered a trial de novo in a court which lacked jurisdiction. The respondent through Mrs Kimale has argued that, the applicant has failed to account for the period of delay.

It is not for this court to determine whether the review application has merits or not. All the same, it needs a lot of energy to convince court what really happened such that a party can stay idle for about eight good years without taking necessary steps. The applicant was by law duty bound to account for each day of the delay. That has never been done and therefore the case of **Lyamuya Construction Company Limited** (supra), cannot be of his rescue. It reinforces

what in fact Mrs Kimale said, which in effect makes this application to have devoid of merits. Ordering a retrial cannot move this court agree with the applicant that there is a point of illegality. The illegality, it has been held time and again, must be apparent on the face of the record not from long arguments. The Court of Appeal in the case of **East African Development Bank vs. Blue Line Enterprises Tanzania Limited**, Civil Application No. 47 of 2010 at Dar es Salaam (unreported) cited with approval the case of **Transport Equipment Ltd v Devram P. Valambhia**, Civil Application No. 18 of 1993 (unreported) which cited that the case of **Chandrakant Joshubhai Patel v Republic** (2004) TLR 218 that:-

"We would say in the light of the authorities at hand, that an error which will ground a review, whether it be one of fact or law, will be an error over which there should be no dispute and which results in a judgment which ought to be corrected as a matter of justice."

The court further based on the case of **Chandrakant** (supra) which also adopted the reasoning in MULLA 14th Edition pp 2335-36 thus:-

*"An error on the face of the record must be such as can be seen by one who runs and reads/ that is/ **an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions...**A mere error of law is not a ground for review under this rule. That a decision is erroneous in law is no ground for ordering review... It can*

be said of an error that is apparent on the face of the record when it is obvious and self evident and does not require an elaborate argument to be established..." (Emphasis original)

Point of illegality which the learned counsel wants to move the court to extend time for review, is NOT obvious and self evident. Instead, it "requires an elaborate argument to be established." I take it that the same reasoning used in application for extension of time based on a point of illegality, equally applies in the application for review.

The applicant has failed to convince this court that indeed there is a point of illegality. I see no grounds to exercise the discretions of this Court to grant the application sought. There is no sufficient reasons shown for extension of time to file review out of time.

Application stands dismissed with costs.



M. G. MZUNA,
JUDGE,
20/08/2021