IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

TANGA DISTRICT REGISTRY

AT TANGA

MISC. LAND APPLICATION NO. 30 OF 2022

FLORA MBWANA ..... APPLICANT

VERSUS

AYUBU CLEMENT .....RESPONDENT

(Originating from Application No. 77 of 2017 of the District Land and Housing Tribunal for Tanga at Tanga and Execution No. 103 of 2020 of the District Land and Housing Tribunal for Tanga at Tanga.)

RULING

26/10/2023 & 13/12/2023

NDESAMBURO, J.:

Flora Mbwana, the applicant in this matter, is seeking an extension of the time within which she can apply to this court to call for, revise and or direct the inspection of records pertaining to Application for Execution No. 103/2020 from the District Land and Housing Tribunal at Tanga (DLHT) and give necessary directions as it may considers may be necessary in the interest of justice.

The application is made by way of chamber summons filed under section 14(1) of the Law of Limitations Act (Cap 89 R.E

2022) and supported by the affidavit of Mr. Yona Lucas, the learned counsel for the applicant.

In paragraphs 6 to 10 of the affidavit, it is sworn that the applicant vehemently opposed the execution application, contending that the land in question was not known and conflicted with the decision of the Ward Tribunal. Despite her objections, the application was dismissed, leaving her dissatisfied with the outcome. In an attempt to seek redress, she initiated legal proceedings, but her application was subsequently struck out by this court in Land Revision No. 01 of 2022. More recently, the respondent endeavoured to enforce the execution, but the same was unsuccessful due to the reason that the land in question is unidentified. As a result, the applicant seeks an extension of time, to file revision against the decision of the DLHT in Application No. 103 of 2020 on the point of law including, firstly, a legal objection asserting that the land remains unknown and conflicted with the case No. 24 of 2011 decided by Misozwe ward tribunal and hence *res judicata*, and secondly, a claim that the execution proceedings lack legal validity due to the absence of a decree.

In the counter-affidavit deponed by the respondent, he contends that the disputed land is known and that the decision is not res judicata and hence the applicant is not entitled to the relief sought.

At the application hearing, the applicant was represented by Mr. Yona Lucas, a learned counsel while the respondent chose to represent himself. The proceedings took place verbally, with arguments and submissions being conveyed orally.

During the submissions, the learned counsel adopted his affidavit, contending that its contents reveal the crux of this application, which is an extension sought for the filing of a revision in respect of Execution No. 103 of 2020 of the DLHT. He further elucidated that after the application initiated by the DLHT, aimed at executing the tribunal's decision, the applicant promptly raised objections. The grounds for objection were rooted in the assertion that the disputed land was unknown. Despite her objection, the matter was dismissed, and a court broker, Majembe Auction Mart, was appointed for execution. However, the execution could not proceed due to the same issue: the subject property was unknown, as evidenced by the attached letter

marked as annexure FM.7. Mr. Yona underscored the established legal principle that the description of the disputed property is imperative for the effective resolution of disputes and execution processes. In support of this argument, he cited the case of this court in **Norman Zahir Hussein and Another v Zakia Fida Hussein,** Land Case No. 4 of 2021.

The learned counsel conceded that the applicant had not accounted for the delay from 2021 to 2022. However, he emphasised that the application is centred on irregularity, asserting there is an apparent illegality which is a sufficient cause to convince this court to grant an extension of time to file a revision against the decision of the DLHT. On the matter of costs, the counsel implored the court to rule in favour of each party bearing its costs.

The respondent objected to the application, asserting that there was no illegality in the DLHT's decision. According to him, the disputed land is well-known, and the execution has been successfully carried out, with the appointed auctioneer officially handing over the contested land to him. In conclusion, the

respondent prayed for the court to dismiss the application and, in turn, award costs to him.

In a rejoinder, the applicant's learned counsel stressed that the execution had not taken place. If all of it has taken place, the Majembe Auction Mart is confusing the parties. He then asked the court to grant the prayer as per the application.

After summarizing the submissions presented by both parties and carefully reviewing both the affidavit and counter-affidavit, the pivotal question to be addressed is the tenability of the application.

Before delving into the determination of the application, it is pertinent to provide a concise overview of the origins of the present matter. The genesis of the application can be traced back to Land Application No. 77 of 2017 before DLHT. In this application, the applicant sought various reliefs, including a declaration as the rightful owner of a 5-acre piece of land situated at Misozwe, Muheza District, within the Tanga Region. Following the proceedings, the DLHT decided the application in favour of the respondent. Dissatisfied with this decision and cognizant of the fact that she had exceeded the allowable timeframe for

appeal, the applicant unsuccessfully sought an extension of time to file the appeal.

The records additionally reveal that the respondent, as the decree-holder, on 10th July 2020 approached the DLHT to execute the decree issued in Application No. 77 of 2017. Subsequently, on 16th December 2020, the DLHT issued an order ordering the applicant to vacate the disputed land and remove her crops within 14 days. In the event of non-compliance, the DLHT would appoint a court broker to forcibly evict her from the disputed land.

The applicant, who was the judgment debtor in Execution No. 103 of 2020, on 2nd February 2021, submitted an objection before the DLHT challenging the tribunal's order dated 16th December 2020. The objections raised encompassed three key points: **firstly**, the assertion that the suit land was entirely outside the possession of the judgment debtor; **secondly**, the absence of any crops on the said land planted by the judgment debtor; and **thirdly**, that the land in question, subject to execution, was unidentified and contradicted the decision of the ward tribunal of Misozwe. Despite the arguments presented by the applicant herein/judgment debtor, the DLHT dismissed the

objection and ordered the execution to proceed, subsequently appointing Majembe Auction Mart to carry out the execution.

The Law provides in Section 14(1) of the Law of Limitation Act that the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application. In the case of **Efrasia Mfugale v Andrew J. Ndimbo and another**, Civil Application No. 38/10 of 2017, the Court of Appeal had this to state about the phrase "reasonable/sufficient or good cause":

> *"It may not be possible to lay down an invariable or constant definition of the phrase "good cause", but the Court consistently considers a myriad of factors. One such factor, which happens to be relevant to this matter, is whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged: see* ***Principal Secretary, Ministry of Defence and National Service v Devram Valambhia*** *[1992] TLR 185; and* ***Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania,*** *Civil Application No. 2 of 2010 (unreported)".*

As alluded to above, the applicant's application is premised on the claim of illegality concerning the objection she raised in the Application for Execution No. 103 of 2020. Illegality by itself constitutes sufficient cause for the grant of the extension of time. In accordance with the authority cited above, the court is duty-bound to examine the evidence before it to ascertain the presence of any significant illegality that would justify the granting of an extension of time.

In alignment with the same guiding principle, I have taken the liberty to thoroughly review the records submitted alongside this application. As demonstrated earlier, the applicant did file an objection to the execution, and the DLHT considered and ultimately dismissed the objections. On the issue of the disputed land being unknown and the absence of no crops, the DLHT concluded that the disputed area was known and that was why the applicant objected. Additionally, the decision did not conflict with the findings of the Misongwe ward tribunal as the decision of the Misongwe ward tribunal was overruled.

Upon a thorough review of the decision, I am firmly convinced that the applicant's assertions do not warrant an

extension of time, as no substantial illegalities have been identified. It is crucial to bear in mind that an extension of time will not be granted automatically whenever an illegality is pleaded. The Court of Appeal in the case of **Magnet Construction Limited v Bruce Wallace Jones**, Civil Appeal No. 459 of 2020 held as follows:

> *"Time will not be extended in every situation whenever illegality is alleged as an issue by the applicant. It all depends on the circumstances of each case and the material placed before the court".*

Additionally, the alleged illegality that the prosecution proceedings and the orders made by the DLHT are of no legal force for lacking a decree is a completely new issue which was not entertained in Application No. 103 of 2020 and therefore it cannot amount to a point of illegality for the extension of time to file revision against such decision.

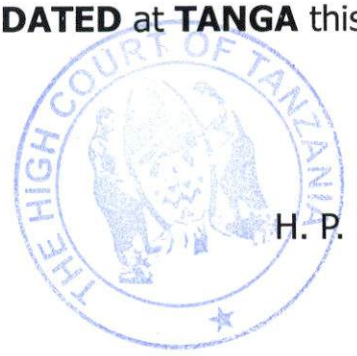
Furthermore, the claim that the execution has not been conducted, as outlined in the accompanying documents, remains a mere assertion. The attached letter fails to serve as conclusive evidence, leaving a notable gap in substantiating this statement. It would have been reasonable to anticipate the inclusion of an

affidavit to bolster this claim, but failure to do that this court cannot confidently rely upon it.

In light of the aforementioned considerations, it is my finding that the applicant has not demonstrated sufficient cause, and consequently, there are no grounds to justify this court exercising its discretion to grant an extension of time sought. Therefore, the application is dismissed. As the parties involved are neighbours and in the interest of fostering a positive relationship, each party is ordered to bear its costs.

It is so ordered.

DATED at **TANGA** this 13th day of December 2023



H. P. NDESAMBURO

JUDGE