

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 147/01 OF 2022**

**THE ATTORNEY GENERAL ..... APPLICANT**

**VERSUS**

**RAKSHA GADHVI .....1<sup>ST</sup> RESPONDENT**

**JEHANGIR AZIZ ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL HOUSING CORPORATION ..... 3<sup>RD</sup> RESPONDENT**

**(Application for extension of time to file an application for revision against  
the decision of the High Court of Tanzania,  
(Land Division) at Dar es Salaam)**

**(Maghimbi, J.)**

**dated the 3<sup>rd</sup> day of June, 2021**

**in**

**Land Case No. 104 of 2018**

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**RULING OF THE COURT**

9<sup>th</sup> June, 2023 & 30<sup>th</sup> January, 2024

**MASHAKA, J.A.:**

This is an application for extension of time within which to file an application for revision against the decision of the High Court of Tanzania (Land division) in Land Case No. 104 of 2018 delivered on 3<sup>rd</sup> June, 2021. It is brought by way of Notice of Motion under rules 10,

4(2) and (b) and 48(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), supported by affidavit deposed by Deodatus Nyoni, Principal State Attorney of the applicant.

The applicant, the Attorney General, moves the Court to grant extension of time to file an application for revision based on the illegalities in the impugned decision. The applicant averred under paragraph 11 of the supporting affidavit that the decision of the High Court is tainted with illegalities that:

- 1. Dismissal of the suit without joining the Attorney General as a necessary party despite the knowledge of the amendment of the Government Proceedings Act vide Act No. 1 of 2020.*
- 2. Dismissal of the suit without according the applicant, Attorney General an opportunity to be heard.*

On the part of the first and second respondents filed affidavit in reply, whereas the third respondent did not file.

Mr. George Kalenda assisted by Ms. Rehema Mtulya, both learned State Attorneys represented the applicant, while the first and second respondents enjoyed the service of Mr. Ali Hamza, learned counsel. Mr. Kalenda prayed for the hearing to proceed under rule 63 (2) of the Rules in the absence of the third respondent which I granted as Mr. Hamza had no objection.

Mr. Kalenda submitted that way back in 1971, the Government of the United Republic of Tanzania acquired Plot No. 1169/199, Flur II, Jamuhuri Street, Ilala Municipality, Dar es Salaam with Certificate Title No. 1821 (the property). An acquisition notice was published in the Government Gazette. The property was placed under custody of the third respondent a public corporation established by the National Housing Corporation Act, CAP. 295. The third respondent leased the building to several tenants, among them the first respondent. As averred by the applicant, it transpired that the first respondent sold the property to the second respondent who registered the same in his name with no notice to the third respondent regarding change of ownership. It is alleged that the third respondent saw a notice of change of ownership through a advert in a newspaper where the second

respondent was requesting for a new Certificate of Title. Since the notice was not pleasant to the third respondent, she wrote to the Registrar of Title to register her concern that the property was owned by the Government and also filed a suit at the High Court of Tanzania at Dar es Salaam, Land Division, Land Case No. 104 of 2018. She was claiming to be declared a rightful owner of the property. The suit was dismissed for expiry of speed track. Later, through the Solicitor General a summons was served on the applicant in respect of Civil Cause No. 3 of 2022 to show cause why the caveat registered in the Land Registry in favour of the third respondent be removed. The caveat was entered in respect of the property involved in Land Case No. 104 of 2018. It was upon scrutiny the applicant noted that there was an order issued in Land Case No. 104 of 2018 which dismissed the third respondent's suit for expiry of speed track. The dismissal order had the effect of granting the first and second respondents the right of ownership over the property without proof and denied the applicant an opportunity to establish her right over the same. The applicant was not a party to Land Case No. 104 of 2018 though the trial court was notified of changes to the Government Proceedings Act. The applicant noted the order was tainted with

illegalities as earlier stated which can be resolved by way of revision. Concluding, Mr. Kalenda implored me to grant extension of time to file an application for revision as time had lapsed to file said application.

In a nutshell, Mr. Hamza resisted the application and prayed it be dismissed with costs as the dismissed Land Case No. 104 of 2018 was not a suit to bring into play the Government Proceedings Act; it was between the third respondent (NHC) and the first and second respondents. Mr. Hamza argued that the applicant was accordingly represented by the third respondent through a State Attorney. He strongly refuted paragraph 11 of the supporting affidavit that the suit was dismissed without joining the applicant as a party. He contended that the applicant was at all times aware of the suit and there was no illegality in the impugned decision of the High Court.

From the record of this application, the issue for determination is whether illegality constitutes sufficient cause for the Court to exercise its discretion under rule 10 of the Rules.

I have reproduced for ease of reference rule 10 of the Rules that: -

*"The Court may, upon good cause shown, extend the time limited by these Rules or by any*

*decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."*

On the strength of rule 10 of the Rules, an extension of time is purely discretionary and judicially exercised by the Court. In **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, (unreported), the Court formulated following benchmarks to be considered in granting extension of time:

- "(a) The applicant must account for all the period of delay,*
- (b) The delay should not be inordinate,*
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,*
- (d) If the court feels that there are other sufficient reasons, such as the existence of the point of law of sufficient importance;*

*such as the illegality of the decision sought to be challenged.”*

The position of the law is settled that an issue of illegality of the impugned decision constitutes good cause for extension of time. In **Principal Secretary Ministry of Defence and National Service v. Devram P. Valambia** [1992] TLR 387 the Court held:

*"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 alleged illegality be established, to take appropriate measures to put the matter and the record right."*

In the instant application, the applicant averred at paragraph 11 of supporting affidavit that she was not a party to the proceedings of the High Court despite the knowledge of the amendment of the Government Proceedings Act vide Act No. 1 of 2020, in which a dismissal order granted right of ownership to the 1<sup>st</sup> and 2<sup>nd</sup> respondents without proof which denied the applicant the right to be heard on the ownership of the property. The right to be heard is a fundamental principle of natural justice which should always be observed, a party's right to be heard be

guaranteed. The Court has emphasized this in a number of its decisions, including **Mbeya – Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2003] T.L.R. 251 that the right to be heard is both fundamental and constitutional right enshrined in Article 13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977.

In **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7, and 8 of 2006 (unreported) the Court stated:

*"It is therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8[now rule 10] regardless of whether or not reasonable explanation has been given by the applicant under the rule to account for the delay."*

Guided by the above excerpts, I am satisfied that the alleged illegalities in the decision sought to be challenged amount to good cause warranting extension of time to avail the applicant opportunity to file application for revision to address them.

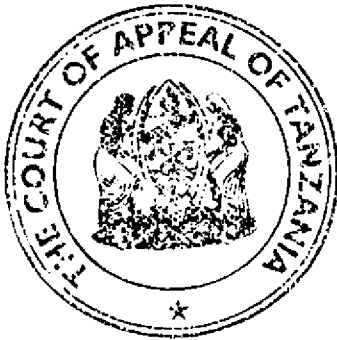


Thus, I grant extension of time. The applicant should lodge the intended application for revision within sixty days from the date of delivery of this ruling.

**DATED at DAR ES SALAAM** this 29<sup>th</sup> day of January, 2024.

L. L. MASHAKA  
**JUSTICE OF APPEAL**

Ruling delivered this 30<sup>th</sup> day of January, 2024 in the presence of Ms. Grace Lupondo, State Attorney for the Applicant, who also took brief for Mr. Aloyce Sekule, learned counsel for the 3<sup>rd</sup> Respondent and Mrs. Lige James, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is hereby certified as a true copy of the original.



  
A. L. KALEGEYA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**