

**THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**LAND REVISION No.10 OF 2019**

*(Originating from Land Dispute No.212/2009 from the District Land and Housing Tribunal of Mwanza at Mwanza dated 7<sup>th</sup> December, 2009)*

**CRISTABELLA LUDOVICK MTANI ..... APPLICANT**

**VESRUS**

**NIMROD SOSPETER KAJERI .....1<sup>ST</sup> RESPONDENT**

**ABUBAKAR MAYENGA KERABA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Last Order: 20.02.2020

Judgment date: 25.02.2020

**A.Z.MGEYEKWA, J**

This is a Revision brought under section 43(1),(a)(b) and (2) of the Land Dispute Court Act, Cap.216 and section 95 of the Civil Procedure Code Cap.33 and section 14 of the Law of Limitation Act Cap.89. The application was supported by the affidavits of one Cristabella Ludovick Mtani, the applicant. The applicant is aggrieved by

the decision of District Land and Housing Tribunal which was delivered on the 7<sup>th</sup> day of December, 2009 in favour of the respondent.

At the hearing, the hearing proceeded *exparte* since the respondents were aware of the hearing but they did not appear in court therefore the court decided to proceed *exparte* against both respondents. Mr. Akram, learned counsel represented the applicant.

Arguing in support of the application, the learned counsel for the applicants prays this court to adopt the amended Chamber Summons and the Affidavit of one Cristabella Ludovick Mtani. Mr. Akram stated that the application for revision is brought out of time; he prays this court to call and make a revision out of time. He continued to state that the judgment at the District Land and Housing Tribunal was concerning a mortgage between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent I respect to Land Application No.212 of 2009. Mr. Akram argued that the judgment was tainted with illegality because the 1<sup>st</sup> respondent was not in a capacity of rendering a sum of Tshs. 10,000,000/= to the 2<sup>nd</sup> respondent and take security of Plot No. 630 Bock HH Nyakato, Mwanza without the consent of the legal wife of the 2<sup>nd</sup> respondent (the applicant). The learned counsel argued further that the two celebrated a

customary marriage in 2004. Mr. Akram rebutted that the 2<sup>nd</sup> respondent wife consented the loan agreement since the name appearing in the loan agreement is the name of the 2<sup>nd</sup> wife of the respondent and the 2<sup>nd</sup> wife one Mariam Kajeli never existed as a wife of the 2<sup>nd</sup> respondent. He contended that the loan agreement between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent was never blessed by the consent of the mortgaging Plot No. 630 Block HH Nyakato area.

Submitting further, Mr. Akram stated that the applicant was not aware of the mortgaged agreement between the respondent since she was residing in Tabora working as a Secretary with Shimulwa Company Ltd after being retrenched she went back to her home and found that the disputed plot was mortgaged in January 2019. He continued to state that the applicant confronted her husband and due to unsatisfactory reply she decided to make a follow up whereas she realized that there was a Land Case No.212 of 2009 filed by the 1<sup>st</sup> respondent claiming a sum of Tshs. 10,000,000/= being a loan and failure to pay the loan then Plot No. 630 Block HH will be sold.

The learned counsel for the applicant continued to submit that the applicant delayed to file this application within time and the same was

not contributed by negligence, laxity but it was known to her after she realized she immediately filed this application.

Mr. Akra also raised an issue of illegality that the District Land and Housing Tribunal Judgment contains an issue of illegality that the District Land and Housing Tribunal erred in law in determining the matter while it had no jurisdiction. he referred this court to section 140 (1) (2)(3) of the Land Act that when a mortgagee wants to recover the loan by enforcing the agreement the said application for exercising the power the mortgagee was required to refer the matter to the High Court by way of summary proceeding and not to take the same to the District Land and Housing Tribunal as done by the 1<sup>st</sup> respondent. Mr. Akram fortified his position by referring this court to the case of **Hamida Seif Ahamed v CRDB Ltd and another** Land Appeal No.15 of 2013.

Arguing further Mr. Akram forcefully argued that the 1<sup>st</sup> respondent was not a Registered Financial Institution and never licensed as a money lender. He cited the case of **ULF Nilson v Dr. Tito Mziray Andrew** Land Case No.66 of 2007 DSM (unreported) that a person who is not registered as a money lender or institution is not prohibited from taking security when lending the money. He emphasized that the act of

the 1<sup>st</sup> respondent was illegal and the District Land and Housing Tribunal of Mwanza ordering the sale of mortgaged property erred in law. Mr. Akram stated further that the judgment was tainted with irregularities, confusion, and incorrectness he referred this court to the authority of **Principal Secretary Ministry of Defence and National Service v Valambhia** 1982 TLR 387.

In conclusion, he prays this court to make enlargement of time in order to call and revise the proceedings of the Land Case No. 212 of 2009 and quash the decision of the District Land and Housing Tribunal of Mwanza.

I have gone through the court records and realized that this revision is hopeless time-barred and the applicant was not a party to the suit at the District Land and Housing Tribunal. Nevertheless, the 1<sup>st</sup> Respondent once filed a Land Appeal No.42 of 2010 before this court the appeal was dismissed. Hence Misc. Land Application No.196 of 2018 before this Court the application was struck out for want of prosecution. The applicant since 2009 was silent until after ten (10) good years she decided to file a revision before this court for revision. The applicant's advocate in his submission stated that the applicant did not consent the

loan agreement between the 1<sup>st</sup> and the 2<sup>nd</sup> respondents. His advocate stated further that the applicant was not aware of the said mortgage because she was residing in Tabora thus she realized that the plot was mortgaged in 2019 when she returned home. It settled law that an applicant must not only demonstrate reasons for the delay but also he must account for each day of delay in taking a particular step in the proceedings. The learned Advocate did not account for each day of delay, 10 years was required to be accounted for. Saying that the applicant was employed and working in Tabora thus she was not aware does not suffice the explanation of delay is a mere assertion.

The Court of Appeal has emphasized the requirement of accounting for every day of delay in a numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May, 2019 and the case of **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

*" Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."*

Guided by the above authority accounting for each day of delay is among the good cause of delay. The learned counsel for the applicant has not given sufficient reasons to move this court to determine the revision out of time because since 2009 if the execution took place the applicant did not file an objection proceeding.

Nevertheless, the issue of illegality raised by the learned counsel for the applicant that the District Land Housing Tribunal had no jurisdiction to determine the matter, in my view, the issue of illegality at this juncture cannot hold water. This court is *factual afficio* in determining this revision because this court determined the appeal which was filed by the 2<sup>nd</sup> respondent against the 1<sup>st</sup> respondent in respect to Land Appeal No.42 of 2010 which was delivered on 10<sup>th</sup> day of October, 2014, therefore, the same issue cannot be entertained by the same court even if these are two different applications but the issue in question was already been determined by my learned Sister Hon. De Mello, J. The applicant could apply for revision if the matter was not

determined by this court. Additionally, the applicant has no locus on the said case since she was not part of the main case at DLHT.

All said and done, I am satisfied that the applicant has failed to show sufficient cause for the delay to warrant this court to grant the application. Therefore, I proceed to dismiss the application without costs.

Order accordingly.

Dated at Mwanza this date the 25<sup>th</sup> day February, 2020.



  
A.Z.MGEYEKWA  
**JUDGE**  
25.02.2020

Ruling delivered in the chamber this 25<sup>th</sup> day February, 2020 in the presence of Mr. Akram, learned counsel for the applicant.

  
A.Z.MGEYEKWA  
**JUDGE**  
25.02.2020