

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISC. LAND APPLICATION NO. 71 OF 2020

TELEZA W/O MARO 1ST APPLICANT

MNYORU W/O MARO 2ND APPLICANT

VERSUS

KITANG'ITA NYABUNYA SIMAMA 1ST RESPONDENT

TONTE WAMBURA TONTE 2ND RESPONDENT

KOGANI MARO SOSERA 3RD RESPONDENT

***(Application for extension of time to file revision from the
decision of the District Land and Housing Tribunal for Mara at
Musoma in Application No. 189 of 2017)***

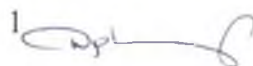
RULING

18th May and 8th July, 2021

KISANYA, J.:

The applicants, Teleza Maro and Mnyoru Maro have moved the court for an order of extension of time within which to file an application for revision of the decision of the District Land and Housing Tribunal for Mara at Musoma (the Tribunal) in Application No. 189 of 2017. The application is made under section 14 (1) of the Law of Limitation Act, Cap. 89, R.E. 2019.

The brief facts leading to this application went as follows: Teleza Maro and Mnyoru Maro are wives of the late Maro Sosera whose estates



were administered by the 1st respondent, Kitang'ita Nyabunya Simama (Kitangi'ta) and 2nd respondent, Tonte Wambura Tonte (Tonte). Sometimes in 2017, the 3rd respondent, Kogan Maro Sosera (Kogani) sued the said Kitang'ita and Tonte before the Tribunal for trespassing to his land. When the matter was called for hearing on 28th February, 2018, Kitang'ita and Tonte defaulted to appear. Upon noticing that Kitang'ita and Tonte had also defaulted to file their written statement of defence, the trial chairperson of the Tribunal entered a judgment in default. It was on 24th September, 2020 when Teleza and Mnyoru lodged the present application.

They deposed in the supporting affidavit that the land in dispute had been distributed to them and one, Eudia w/o Maro and that, they became aware of the case when the 3rd respondent was executing the Tribunal's decision. The applicants deposed further that, Kogani did not prove his case before the tribunal; they were not joined to the case filed by Kogani at the time when the land in dispute had been distributed to them; and the opinion of assessors was not read over.

The respondents were duly served. However, only Kogani filed a counter-affidavit to contest the application.

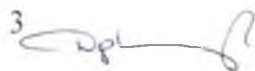
At the hearing of this matter, Mr. Edson Philipo, learned advocate appeared for both applicants while all respondents appeared in persons.

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Submitting in support of the application, Mr. Phillippo reiterated what is deposed in the supporting affidavit that, the applicants are lawful owner of the disputed land which was distributed to them by Kitang'ita and Tonte on 1st November, 2017. He went on to contend that the applicants became aware of the case at the stage of execution on 24/08/2020. The learned counsel submitted further that the proceedings of the Tribunal were tainted with the following illegalities. First, the assessors did not give their opinion. Second, the Tribunal erred to enter a default judgment while the value of the land in disputed was more than 1000 shillings. Therefore, Mr. Philipo prayed for the grant of the application.

The 1st and 2nd respondents had no objection to the application. On his part, the 3rd respondent resisted the application. He submitted that the case subject to the application was lodged on 13 November, 2017 against the 1st and 2nd respondents. He urged me to dismiss the application on the following grounds: First, he did adduce evidence on oath to prove his case. Second, the applicants were aware of the decision of the trial Tribunal. Third, the opinion of assessors was given. Fourth, the applicants had not accounted for the delay.

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Having heard the parties, the issue for determination is whether the applicant has assigned a sufficient ground for extension of time. The factors constituting sufficient ground are not firmly explained or listed. They are determined basing on the circumstances of each case. However, the law is settled that, in considering whether to grant the extension of time or otherwise, the court takes into account the factors including: (a) the length of the delay; (b) whether the applicant have accounted for all the period of delay and demonstrated diligence and not laziness, negligence or sloppiness in taking the required step; (b) whether the Court finds other sufficient reasons, such as the existence of a point of law of sufficient importance, like the illegality of the decision sought to be challenged. There is a peripheral of authorities on that position, including the case of **Damas Assesy and Another vs Raymond Mgonda Paula** and 8 Others, Civil Application No. 232/17 of 2018, CAT at Dar es Salaam (unreported) and **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). For instance the Court of Appeal had this to say in the latter case:

"It is in the discretion of the Court to grant extension of time, but that discretion is judicial, and so it must be exercise 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, and not a path, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) If the Court feels that there are another sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision to be challenged."*

In this case, the applicants have raised the ground of illegality. It is trite law that the point of illegality is by itself a sufficient ground for extension of time. See for instance, **VIP Engineering and Marketing Limited vs Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006 (unreported) where the Court Appeal held as follows:

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes "sufficient reasons" ...for extending time."

However, it is also settled law that the point of law stands as a ground for extension of time if it is of sufficient importance and is apparent of the face of record. See **Lyamuya Construction Company Ltd** (supra).

Guided by the above position, it is common ground that the applicants are beneficiaries of the estates of the late Maro Sosera and that they were not a party to the case subject to the intended application for revision. It was deposed further that the said case was instituted at the time when the 1st and 2nd respondents had distributed the land in dispute to them. Such facts were not contested by the 3rd respondent in his counter-affidavit. He deposed in paragraphs 5 of the counter-affidavit that, the applicants were not joined because the 1st and 2nd respondents were legal representative of the deceased.

The third respondent averred further in paragraph 6 of the counter affidavit that "the applicants were evicted from the disputed land after the 1st and 2nd respondents who were the administrator of the estates on behalf of the applicants (beneficiary) lost the case."

In that regard, if the case subject to this application was instituted at the time when the disputed land had been distributed to the applicants, the issue whether the applicants were accorded the right to be heard may

arise. Further to that, although parties are at one that the 1st and 2nd respondents are legal representative of the late Maro Sosera, the record tells otherwise. The order subject to this decision indicates that the 1st and 2nd respondents were sued in the individual capacity and not legal representative of the late Maro Sosera. Thus another issue whether the 1st and 2nd respondents were properly sued arises.

There is also the issue of legality of the default judgment. Pursuant to regulation 11(1)(c) of the Land Disputes Courts (District Land and Housing Tribunal) Regulation, 2003 and Order VIII, rule 14(2) of the Civil Procedure Code, Cap. 33, R.E. 2002 (now R.E. 2019), suggest that if a party defaults to file his written statement of defence, the case is required to proceed by *ex-parte* proof. Therefore, if the Tribunal entered the default judgment, there is a point of law involved in this case.


The last ground of law on illegality is to the effect that the assessors of the Tribunal were not involved and their opinion recorded to have been given in the presence of the parties as required by the law.

It is my considered view that, all of the above points of law are of sufficient importance. They can only be determined and the record rectified where need arises, if this application for extension of time is granted.

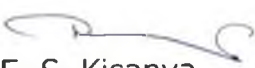
For the foregoing reasons the application is granted. Accordingly, the intended application for revision should be lodged within forty five (45) days from the date hereof. Costs shall follow the event.

DATED at MUSOMA this 8th day of July, 2021.




E. S. Kisanya
JUDGE

COURT: Ruling delivered this 8th day of July, 2021 in the presence of the 2nd respondent ^{and} in the absence of the applicants and the 1st and 3rd respondents.


E. S. Kisanya
JUDGE
8/07/2021