

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

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

MISCELLANEOUS LAND APPLICATION NO. 57 OF 2021

(Arising from Misc. Land Application No. 47 of 2020, Misc. Land Application No. 138 of 2017 and Original Land Dispute No. BK/KN/17/2017 Kagera Nkanda Ward Tribunal)

NDILA MASHEMA JIHANGO.....APPLICANT

VERSUS

KACHUPA LUNYEMULA..... RESPONDENT

R U L I N G

19/04/2022 & 20/04/2022

L.M. MLACHA, J.

The applicant, Ndila Mashema Jihango filed an application under section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019 seeking extension of time within which to file an application for revision against the decision of the District Land and Housing Tribunal for Kigoma (the DLHT) made in Miscellaneous Land Application No. 138 of 2017, original Kagera Nkanda Ward Tribunal Application No. BK/KN/17/2017. The application is supported by the affidavit of the applicant. Service was effected to the respondent, Kachupa Lunemula who appeared before the court on 24/2/2022. The

case was set for hearing on 19/4/2022. The respondent was ordered to file a counter affidavit before the date. He could not appear or file any counter affidavit. Mr. Dickson Makongo who appeared for the applicant prayed to proceed ex parte and he was allowed.

Submitting before the court, Mr. Dickson said that the court should grant extension of time because of the existence of illegalities in the decisions of the lower tribunal. He mentioned them; One, that the case which was lodged at the Ward tribunal involved 30 acres of land worthy 30M over and above the pecuniary jurisdiction of the tribunal. Two, that the suit land is in Uvinza District but the case was heard by the ward tribunal which is in Kasulu district outside the territorial jurisdiction of the tribunal. He argued that the ward tribunal had no jurisdiction to hear the case making the decisions of the ward tribunal and DLHT illegal. Counsel went on to say that the decision of the DLHT was on an objection proceeding and thus conclusive. The aggrieved party has no right of Appeal but to file a fresh suit or revision, he said. He referred the court to **Amour Habib Salum v. Hussein Bafagi**, CAT Civil Application No. 76 of 2010 on this point.

I had time to peruse the decisions of the lower tribunals. I have considered the counsel submission and read the case which was cited to

support it. I agree that illegality where established is a ground for extension of time. See **VIP Engineering Marketing Limited and 2 Others v. City Bank Tanzania Limited**, CAT Consolidated Reference Nos. ,6, 7, and 8 of 2006 where it was said that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay. See also **Lyamuya Construction Company Limited V. Board Of Registered Trustees Of Young Womens Christian Asociation Of Tanzania**, CAT Civil Application No. 2 of 2010 and **Ezron Mageza Maryogo v. Kassimu Mohamed Said and another**, CAT Civil Application No. 227 of 2015. I also agree, as was said in the case of **Amour Habib Salum** (supra) that an order which is given in a determination of objection proceedings is conclusive. A party who is aggrieved thereby and intends to pursue the matter further has no right of appeal. The course that is open to him is to file a suit to establish the right he claims to the property in dispute. It was obvious that the applicant in this case could not appeal. His right was to file a suit or go by way of revision as he is trying to do.

Looking at the decisions of the lower tribunals and the submissions made, I am convinced that there is an illegality apparent on the face of the records calling for the grant of the application to enable the court to see it further. Revision is one the ways which can help the applicant to get out of the problem. The court was thus properly moved and the application has merits.

That said, the application is granted. The applicant is given 14 days within which to lodge the application for revision. It is ordered so.



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L.M. Mlacha

Judge

20/4/2022

Court: Ruling delivered. Right of Appeal Explained.



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L.M. Mlacha

Judge

20/4/2022