

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISCELLANEOUS LAND APPLICATION NO. 5 OF 2021

(Arising from Land Appeal No. 6 of 2019 of the District Land and Housing Tribunal for Maswa at Maswa)

NKWIMBA HYILA.....APPLICANT

VERSUS

1.MURTAZA ALLO

2.FLORA HYILA

3.TABU HYILA

4.SUMAI HYILA

.....RESPONDENTS

RULING

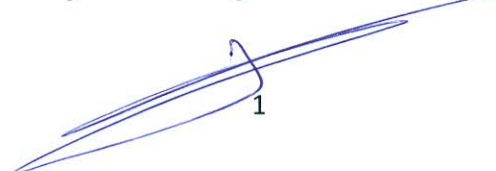
17TH AUGUST, 2022

A. MATUMA, J.

This is an application for extension of time within which the applicant is seeking to appeal against the Judgment of the District Land and Housing Tribunal for Maswa in Land Application no. 6 of 2019.

In that particular case, after an exparte hearing the trial tribunal found that the Applicant had already litigated against the 3rd respondent herein among others who are not parties herein and was decreed lawful owner of the suit land.

The suit was thus res-judicata against the respondent Tabu Hyila.


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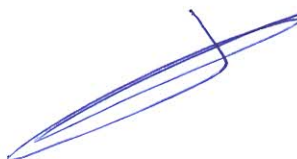
Unfortunately it proceeded to dismiss the suit against all respondents. That action aggrieved the applicant but could not appeal in time hence this application.

At the hearing of this application the applicant was present in person and she could not explain much her application but adopted her supporting affidavit to this application.

Mr. Lucas Bundala learned advocate readily conceded that since the matter was found Res judicata against one of the Respondents, it was legally wrong to dismiss the whole suit against all respondents as the cause of action alleged by the applicant against such other respondents was yet to be determined.

In that regard he explained that such is a legal matter which in itself suffices to grant this application. When I asked him as to whether I could exercise my revisional powers to remedy the situation rather than granting extension of time for the applicant to appeal on the obvious ground which they themselves concede and would as well concede on appeal, the learned advocate submitted that it is in the interest of justice that I exercise my Revisional powers which would serve both costs and time of the parties.

On my side I entirely agree with Mr. Lucas Bundala learned advocate that the learned trial chairman having found that the matter before him was re-judicata against only one of the respondents, it was open to him to order the names of such respondent to be struck out from the suit in terms of order 1 rule 10 (2) of the Civil Procedure Code, Cap. 33 R.E.2019 and proceed with the suit against the rest of the respondents.



It was therefore wrong to dismiss the applicant's suit which denied her the reliefs sought against such other respondents whom they had never litigated in any Court of competent jurisdiction

This alone as rightly argued by Mr. Lucas Bundala learned advocate is enough and sufficient cause to warrant extension of time for the Applicant to lodge her intended appeal.

Even though and as rightly pointed out by Mr. Lucas Bundala, I am enjoined Revisional powers to remedy the situation for the interest of both parties. This is because both the Civil Procedure Code and the Land Disputes Courts Act confers such power to this Court.

Not only that but also the Court of Appeal and this Court had at times held that when the Court sits on appeal or otherwise, finds that there are unpleasant features on the records of the lower Court, it may in its absolute discretion not decided the matter in its merits but rather exercise its revisional powers to remedy the unpleasant features. See among others cases that of; **Paul Jacob v. The Republic, Criminal Appeal no. 2 "B" of 2010, Editor, Majira News paper and 3 others V. Rev. Fr. Riccardo Enrico Riccion and 26 others, Civil Appeal no. 35 of 2013, and Elikana Bwenda v. Sylvester Kuboko, Civil Appeal no. 7 of 2020**, High Court at Kigoma.

In that respect, instead of granting the applicant extension of time for her to appeal on such obvious reason, I do hereby exercise my revisional powers and remedy the situation in the following manner.

According to the records at hand, the Applicant had sued the respondents herein Murtaza Allo, Flora Hyila, Tabu Hyila and Sumai Hyila. Out of all these only Tabu Hyila had previously been adjudged in Land

Application no. 63 of 2013 at the District Land and Housing Tribunal for Mwanza.

The rest of the respondents were not. Therefore, the suit against them could have not been dismissed under the doctrine of res-judicata.

I therefore quash the exparte judgment in Land Application no. 6 of 2019 before Maswa District Land and Housing Tribunal, and set aside a decree thereof.

I order that the Applicant's suit be restored and heard on merits. The trial Court may as I have said struck out the name of either defendant who appears to have been wrongly sued. But in doing so there must be sufficient reason in respect of each struck out name.

In the circumstances of this matter I order no costs to either party.

It is so ordered.


A. MATUMA
JUDGE
17/08/2022

Court:

Ruling delivered in the presence of the Applicant in person and Advocate Lucas Bundala for the Respondents.




A. MATUMA
JUDGE
17/08/2022