IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)
AT ARUSHA

MISC. LAND APPLICATION NO. 83 OF 2020
(Originating from the District Land and Housing Tribunal for Arusha, Execution Application No. 436 of 2015, Originating from Makiba Ward Tribunal, Application No. 07 of 2014)

ABRAHAM EDWARD SUMARY ..... APPLICANT

Versus

HERIELI MRINDOKO ..... 1ST RESPONDENT

ZAKARIA MOLLEL ..... 2ND RESPONDENT

NARUKONGERA OLODI ..... 3RD RESPONDENT

TANZANIA AUCTION MART COURT BROKERS & DEBT

COLLECTORS LIMITED ..... 4TH RESPONDENT

RULING

6th April & 6th May, 2022

Masara, J.

By way of a chamber summons, the Applicant herein preferred this application seeking for extension of time within which to file revision against the decision of the District Land and Housing Tribunal for Arusha (the "district tribunal"), made in Execution Application No. 436 of 2015 that was delivered on 11/02/2016. The Applicant also applied for extension of time to file for a revision against the decision of Makiba Ward Tribunal ("the trial tribunal") in Application No. 7 of 2014, that was delivered on 28/05/2015. The application is supported by the affidavit

deponed by the Applicant himself. It is only the 1st Respondent who contested the application in a counter affidavit deponed by himself. The other three Respondents did not file counter affidavits. They also did not file written submissions.

Brief facts giving rise to this application as can be gleaned from the affidavits and annexes are thus: At the trial tribunal, the 1st Respondent sued the 2nd and 3rd Respondents for trespassing into his piece of land measuring eight (8) acres, located at Mtoni hamlet, Makiba Village and Ward, Arumeru District within Arusha Region (the "suit land"). The trial tribunal decided in favour of the 1st Respondent by declaring him the lawful owner of the suit land. The 2nd and 3rd Respondents were ordered to give vacant possession of the suit land. The 1st Respondent filed Execution Application No. 436 of 2015 in the district tribunal with a view of executing the decision of the trial tribunal. In its ruling delivered on 11/02/2016, the 2nd and 3rd Respondents were given 14 days to give vacant possession of the suit land. The 4th Respondent was appointed to execute the order by evicting the 2nd and 3rd Respondents and demolish any structure or development made thereat. In December, 2018, the Applicant was served with summons from the Ward Executive Officer and a notice from the 4th Respondent, who were instructed to execute the

order of the district tribunal. The Applicant then instituted Land Application No. 36 of 2019 in the District Land and Housing Tribunal of Arusha on 15th February, 2019. The Application was struck out by the said Tribunal whereby the Applicant was advised to challenge the decision by a revisional application as the said tribunal was "*functus officio*".

The Applicant's grievance is that, he has a piece of land measuring five acres which is part of the suit land. Knowing that he was not a party in Application No. 7 of 2014, he intends to challenge the decisions of both the trial tribunal and the district tribunal, but he found himself out of time, hence this application.

At the hearing of the application, the Applicant was represented by Mr John M. Shirima, learned advocate, while the 1st Respondent was represented by Mr F. Muhalila, learned advocate. The application was heard through filing of written submissions.

Submitting in support of the application, Mr Shirima contended that the Applicant was aggrieved by Execution Application No. 436 of 2015 since his farm measuring five acres was included in the dispute in Application No. 7 of 2014 that was decided by the trial tribunal. He added that the Applicant was never served with any summons to appear before the trial

tribunal so as to exercise his right to be heard in respect of his piece of land. Since the Applicant was not a party in the two tribunals, he automatically lacks locus to appeal against the two decisions. The only remedy that can be exercised is to apply for revision in this Court.

As for the reasons for delay, it was Mr Shirima's submission that as soon as he was served with the notice of execution, on 15/02/2019, he filed Application No. 36 of 2019 in the district tribunal seeking a declaration that the 1st, 2nd and 3rd Respondents were trespassers to his land. Unfortunately, the district tribunal considered itself to be functus officio to determine the matter. The Application was eventually withdrawn on 13/08/2020. He called upon the Court to exercise its discretional powers to extend him time to file the intended revision, citing the decision of the Court of Appeal in **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's and Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported), where grounds for extending time were elaborated. In Mr Shirima's view, the Application under scrutiny duly complied with the principles laid down in **Lyamuya's case**. He further urged that there are overwhelming chances of success in the intended revision, which is one of the factors to be taken into account. To buttress his argument, he relied

on the decision in the case of **Samson Kishosha Gabba vs Charles Kingongo Gabba [1990] TLR 133.** Counsel for the Applicant urged the Court to allow the application with costs so that the Applicant can exercise his right to be heard.

In rebuttal, Mr Muhalila was of a strong view that the Applicant has failed to advance sufficient reasons for the delay to file the intended revision. According to Mr Muhalila, the Applicant has not stated reasons for the delay in his affidavit; rather, there are mere statements made in the written submission. He strenuously submitted that the Application has fallen short of the threshold illustrated in the **Lyamuya case** (supra). In his view, the Applicant has shown negligence and laxity for failure to disclose the reasons for delay in his affidavit. It was Mr. Muhalila's further submission that the Applicant has not accounted for each day of the delay. To support his argument, he made reference of the decisions in **Athuman Mtundunya vs The District Crimes Officer of Ruangwa and 2 Others, Civil Reference No. 15/20 of 2018** and **Yazid Kassim Mbakileki Vs. CRDB (1996) Bukoba Branch and Another, Civil Application No. 412/04 of 2018** (both unreported), which require a party who seeks extension of time to account for each day of the delay.

In addition to the above submissions, Mr Muhalila contended that this application is untenable since it seeks to revise the decision of trial tribunal, which decision this Court cannot revise. That powers to revise the decision of the Ward tribunal is vested in the district Tribunal, the learned advocate submitted. He concluded that the Applicant delayed for more than seven years without sufficient grounds, hence the Application should be dismissed with costs.

In rejoinder submission, Mr Shirima reiterated that in the affidavit in support of the application, mainly under paragraphs 4, 5, 6 and 7, the Applicant deposed that he became aware of existence of the two applications in December, 2018 after he was served with a notice of executing the decision of the district tribunal. He did not stay idle, he instituted Application No. 36 of 2019 in the district tribunal which was withdrawn on 13/08/2020. He maintained that the Applicant has not slept over his rights, rather he has been in the Court corridors all the time struggling for his rights. Mr Shirima cited Article 13(6)(a) of the Constitution relating to the right to be heard.

I have ardently considered the affidavits of the parties and their respective submissions. The main issue for determination is whether the Applicant

has advanced sufficient reasons to warrant him the extension of time sought.

I need to state at the outset that sufficient reasons for the delay is a *conditio sine qua non* for the extension of time to be granted. The law is trite that a party seeking the Court to extend time within which to do an act beyond the time limited by law has to show sufficient cause for the delay. The power to extend time given under the law is discretional, but courts are called upon to exercise such power judiciously. In this respect, I am guided by the Court of Appeal decision in **Wankira Benteel vs Kaiku Foya, Civil Reference No. 4 of 2000** (unreported), where it was held:

> *"We are respectfully in agreement with the learned single judge on this. We only wish to emphasize that although Rule 8 of the Court Rules, 1979 gives a discretional power to the Court to extend time such discretion can only be used where there is sufficient reason. Generally, rules of procedure must be adhered to strictly unless justice clearly indicates that they should be relaxed."*

In the application at hand, the Applicant's main reasons for delay to file the intended revision are canvassed under paragraphs 4, 5, 6 and 7 of the affidavit in support of the application. The reasons put forth are such that he was not aware of existence of Application No. 7 of 2014 that was determined by the trial tribunal, since he was not summoned or made party to that case. Notice was served upon him in December, 2018 by the

4th Respondent who was tasked to execute the order of the district tribunal in respect of Execution Application No. 436 of 2015. On his part, Mr Muhalila was of the view that the Applicant has failed to adduce reasons for delay in the affidavit in support of the application but the reasons were mainly adduced in the submission.

A quick scan of the affidavit in support of this Application outlines reasons for the delay, contrary to what Mr Muhalila submitted. The reasons for the delay are elucidated under paragraphs 4, 5, 6 and 7 of the Applicant's affidavit as above stated. The same reasons were elaborated in the written submission in support of the Application. There is no record showing that the Applicant was made a party in both the trial tribunal as well as the district tribunal. However, his piece of land was referred in Application No. 7 of 2014 in the trial tribunal, which is clear evidence that he has an interest in the suit land.

Since the Applicant had no notice of existence of Application No. 7 of 2014, and since he acted promptly after he was issued with a notice in December, 2018 by instituting Application No. 36 of 2019, it cannot be said, as Mr Muhalila contends, that the Applicant was not diligent. In an attempt to fight for what he believed to be his right, he acted promptly. In addition, as soon as the said Application No. 36 of 2019 was found

wanting in the eyes of the district tribunal, the on 13/08/2020 Applicant did not stay idle. He promptly filed the instant application on 22/10/2020. The proposition that there was laxity and negligence on the part of the Applicant is, therefore, untrue. The principles established in the case of **Lyamuya Construction Company Limited** (supra) were fully complied by the Applicant.

Let me add that the Applicant, in his affidavit and the submission thereof, submitted that he seeks to pursue his right to be heard which he was denied by the two lower tribunals. The decision of the district tribunal, which the Applicant seeks to challenge, originated from Application No. 7 of 2014 in which the Applicant's land was also included without affording him the right to be heard on ownership of his piece of land. If such allegations are to be proven, it would amount to an illegality which calls upon the attention of this Court to ascertain. Illegality has been held sufficient reason for extending time. Leaving that decision to stand unopposed amounts to failure to accord him the right to be heard. In the case of **Samwel Munsiro vs Chacha Mwikwabe, Civil Application No. 539/08 of 2019** (unreported), it was held:

> *"As often stressed by the Court, for this ground to stand,* ***the illegality of the decision subject of challenge must clearly be visible on the face of the record, and the illegality in***

focus must be that of sufficient importance." (Emphasis added)

Failure to accord a party the right to be heard and the decision of the district tribunal that it was functus officio, irrespective of the fact that the applicant was not a party to the proceedings before the trial tribunal are, in my view, two apparent illegalities warranting the extension of time sought. The argument by Counsel for the 1st Respondent that this Court has no jurisdiction to revise the decision of the trial tribunal was prematurely made. At this stage, if I go by Mr Muhalila's submission, I will be determining the revision which is yet to be filed before this Court. Whether this Court has jurisdiction to entertain the revision, that will be in the domain of the Court when the intended revision is placed before it.

Guided by the above analysis, the Applicant has furnished sufficient reasons to warrant him extension of time to file revision to this Court. The application is merited, it is accordingly allowed. The Applicant to file his intended revision within thirty days from the date of this ruling. Costs to be in the cause.

Y. B. Masara

JUDGE

6th May, 2022.