

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPLICATION NO. 51 OF 2022

*(Arising from Land Application No. 33 of 2018 of the District Land and Housing Tribunal for Mbeya at Mbeya)*

SEVELINA CHAWA .....APPLICANT

VERSUS

KANISIA MWINUKA ..... RESPONDENT

**RULING**

*Date of last Order: 07.12.2022*

*Date of Ruling: 06.04.2023*

**Ebrahim, J:**

The Applicant herein has made the instant application under **section 14(1) of the Law of Limitation Act, Cap 89 RE 2019** praying for extension of time to lodge revision against the decision of the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 33 of 2018. The application is supported by the affidavit sworn by the applicant.

Going by the Applicant's averments in her affidavit, the decision of the trial Tribunal in Land Application No. 33 of 2018 was delivered on 11.07.2018. Thereafter, the applicant filed an application for extension of time to seek revision of the impugned

decision of the trial Tribunal but the same was struck out for being incompetent by this court on 07.09.2021. She was then issued with a copy of drawn order and ruling on 1<sup>st</sup> June 2022 and made the instant application on 15<sup>th</sup> July 2022. She said the reasons for the delay are that she was sick and also that the judgement of the trial Tribunal is tainted with illegality. She attached annexure A-5 being a report from Chimala hospital.

On the other hand, the respondent vigorously challenged the application and put the applicant to strict proof thereof concerning her sickness. She further contended that the applicant has not established any sufficient reason for the delay and that the decision of the trial Tribunal is not tainted with any irregularity as the matter was not res judicata. She was further of the views that the applicant ought to have filed an appeal instead of revision. She prayed for the application to be dismissed with costs.

The instant application was argued by way of written submission and both parties appeared in person, unrepresented.

Submitting in support of the application, the applicant adopted the contents of her affidavit to form part of the submission.

Submitting on the need for establishment of sufficient reasons and accounting for the days of delay for consideration by the court to grant the application (**Tropical Air (TZ) Limited Vs Godson Eliona Moshi**, Civil Application No. 9 of 2017 (unreported) which quoted with approval the case of **Lyamuya Construction Ltd Vs Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported)), the applicant said that the delay of 48 months in filing the intended revision was due to her sick condition which left her paralyzed. She attached annexure A-5 being the medical chit from Chimala Mission Hospital showing that she attended the hospital. She further invited this court to a Court of Appeal decision in the case of **Alasai Josiah (suing by his Attorney Oscar Sawuka) Vs Lotus Valley Ltd**, Civil Application No. 498/12 of 2019 (unreported) on the holding that sickness is beyond human control and a person cannot be faulted for falling sick.

Submitting on another reason of illegality as stated at paragraph 7(b) of the affidavit, she said there are two contradicting judgements on the same piece of land. She cited the case of **Principal Secretary, Ministry of Defense and National Service Vs**

**Devram Valambhia** [1992] TLR 185 to substantiate her argument. She prayed for the application to be allowed with costs.

Responding to the applicant's submission, the respondent vehemently challenged the application. He also adopted his counter affidavit to form part of his submission and argued that the application is misconceived hence incompetent because the applicant is supposed to pray for extension of time to file appeal but not revision. He referred to the Court of Appeal case of **Israel Malegesi and Francis Maingu VS Tanganyika Bus Services**, Civil Application No. 172/08 of 2020 pg 12 unreported where it was held that " ...I find it logical, as per the rules of reason that granting an extension of time to a futile application does not amount to a good cause.....". He contended further that the allegation of sickness needs a concrete proof that the applicant fell sick and was reasonably prevented from taking the necessary steps within the prescribed time – **Pastory J. Bunonga Vs Pius Tofiri**, Misc Land Application No. 12 of 2019 (unreported) (HC). He stressed that the applicant ought to have shown the court when she attended the hospital, when she was referred by the doctor to stay at home and when she went to the hospital again so as to account for the

days of delay. She referred this court to the case of **Osward Mruma vs Mbeya City**, Civil Application No. 100/06 of 2018 (unreported) where the case of **Bushir Hassan Vs Latifa Mashayo**, Civil Application No. 03 of 2007 was quoted with approval that:

*"Delay even of a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"*

Pertaining to the issue of illegality, the respondent contended that the applicant has failed to prove to the court that there is such illegality as it is the principle of the law that the alleged illegalities must be apparent on the face of the record and not otherwise.

Verily, extension of time is a discretionary power of the court to be exercised judiciously. The Court of Appeal has in the case of **Hamisi Mohamed (as an administrator of the estate of the late Risasi Ngawe) Vs. Mtumwa Moshi (as administratrix of the estate of the late Moshi Abdallah)**, Civil Application No. 407 of 2019 stressed on the requirement to show that the delay was caused by a good cause. Again, the Court of Appeal has in the cited case of **Israel Malegesi Vs Francis Maingu (supra)** expounded the term "good cause", invoked its wisdom and emphasised on consideration of

the same regarding the peculiar facts and circumstances of the case. The Court held as follows:

*"The term "good cause" is not defined in the Rules. Nonetheless, the Court has stressed that in assessing whether there is "good cause", each case has to be considered on its own peculiar facts and circumstances and the court must **always be guided by the rules of reasons and justice, and not according to private opinion, whimsical inclination or arbitrarily**".*

The above observation of the Apex Court arose from the fact that the applicant applied for extension of time to file revision while the law does not allow revision or appeal on interlocutory proceedings. Abreast of the position of the law while astute of the position that in an application for extension of time the court is excluded in venturing on the merits of the intended cause of action, the Court of Appeal applied rules of reasons and rejected to grant extension of time to a futile application and termed the same as not a good cause.

Inspired by the above wisdom of the Court of Appeal, I am equally inclined by parity of reasoning and guided by the rules of justice to apply the same and decline to grant this application for the reason that shall be apparent soon.

The applicant has complained that the reason for seeking the intended revision is that there are two decisions on the same

piece of land issued by two courts. The first one being between the applicant and one Hendrick Chawe, Land Application No. 16 of 2017 at Ihahi Ward Tribunal where the same was decided in favour of the applicant. Another one is Land Application No. 33 of 2018 at The District Land and Housing Tribunal for Mbeya at Mbeya which was decided in favour of the respondent herein and it is the subject matter of the instant application. In essence, the applicant seeks to challenge the decision of the DLHT that it is res judicata on the basis that it had no jurisdiction to entertain a fresh suit to determine a land matter which had already been determined by the Ward Tribunal.

Verily, guided by the reasoning of the Court of Appeal in the above cited case, while I am warning myself not to invoke into the journey of determining the merits of the intended revision, still reasons of justice would not be served if I allow the futile application which as correctly observed by the respondent, it is obvious that the applicant ought to have filed an appeal and not revision. Revision does not conclusively adjudicate rights of parties but rather sets the procedure correct or cures the illegalities of the proceedings; whilst the applicant's claim is geared into

declaration of her ownership of the piece of land as decided by the Ward Tribunal. Thus, it would be futile to extend time to the applicant to file revision while the law is clear in so far as the facts and circumstances of her complaint are concerned that she should have applied for extension of time to lodge an appeal.

It is on the above explained reason, I equally apply the rules of justice, logic and reasoning to find that an obvious futile application is neither good nor sufficient reason to extend time. Consequently, I dismiss the application with costs.

Accordingly ordered.



**Mbeya**

**06.04.2023**

**R.A. Ebrahim**

**JUDGE**