

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB REGISTRY
AT ARUSHA

MISC. LAND APPLICATION NO. 167 OF 2022

(C/f Revision No. 06 of 2021 at the High Court of the United Republic of Tanzania,
Originating from Application for execution No 75/2007 at the District Land and
Housing Tribunal of Arusha and Application No 44/2007 at Mateves Ward Tribunal)

LONGUTUTI METISHOOKI APPLICANT

VERSUS

GODFREY MELAMI RESONDENT

RULING

12th June & 17th July 2023

KAMUZORA, J.

The Applicant is seeking for extension of time to file review to this Court in respect of the decision of this court in Land Revision No. 06 of 2021. The application was brought by way of chamber summons under section 14 (1) of the Law of Limitation Act, [Cap 89 R.E 2019] and supported by an affidavit sworn by Frida Magesa, counsel for the Applicant.

Briefly, the applicant herein filed revision application before this court, Revision No. 6 of 2021 challenging the decision of the District Land and Housing Tribunal of Arusha in Application No 44 of 2007. After

hearing parties to the revision application, this court allowed the application by revising the proceedings and ruling of the DLHT and directed execution to proceed in accordance to the law. The applicant returned to the DLHT with the request that the order of this court be complied with and the execution process be effected in its conclusiveness. His request was not honoured and according to the fact brought to this court, there was a claim by the Chairman of the DLHT that there were no directives of this court on what was to be done. The applicant found that the only remedy was to file review so that this court could give directives for execution process but he was barred by time limitation hence preferred this application for extension of time so that he can file application for review.

According to the sworn affidavit in support of the application, it was deponed that, after he had received the decision in Revision Application No. 06/2021, the Applicant went back to the District Land and Housing Tribunal of Arusha at Arusha for the purpose of executing the decision. That, on 19/9/2022 the Applicant was informed verbally by the Chairman of the DLHT that execution cannot be conducted as requested as the said decision had no directives. That, the Applicant made an effort to seek clarification to the Deputy Registrar of this court and was told to seek for review. That, in all that process the Applicant was time

barred for 79 days to file the said review application hence he preferred the current application for time enlargement.

Opposing the application, the Respondent filed a counter affidavit noting some of the Applicant's claims and disputing others. The Respondent also claimed that the Applicant has not adduced any sufficient reason and or account for each day of the delay.

Hearing of the application was by way of written submissions. As a matter of legal representation, the Applicant was represented by Ms. Frida Magesa, learned advocate whereas the Respondent appeared in person with no legal representation.

Supporting the application, the counsel for the Applicant submitted that the Applicant herein was also the Applicant in Land Revision Application No. 06 of 2021 which was finally determined on 25/7/2022. That, after the determination of the matter before this court, the Applicant applied before this court as per annexure L2 for transfer of case file to the DLHT so that he could apply for execution. That, by virtual of annexure L3 the Applicant made an application for execution before the DLHT and waited for the response but it was until 19/9/2022 when he was informed verbally by the Chairperson of the DLHT that execution cannot be effected as the decision of this court did not give directives to evict the Respondent rather it directed compliance of

Regulation 30 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2002 GN No.174 of 2003. That, the Applicant sought for clarification from the Deputy Registrar of this court and it was until 11/11/2022 when he was advised to file a Review Application before this court. That, the Applicant noted that he was already time barred to file review for a period of 79 days hence he preferred the current application.

Referring section 14(1) of the Law of Limitation Act [Cap 89 R.E 2019] the Applicant contended that this court can grant the prayer sought upon reasonable and sufficient cause being shown. That, what amount to sufficient good cause has been stated under the case of **Rashid Awami Njowoka Vs. Fatuma Mustapha**, Misc. Civil Application No 136 of 2021 (Unreported) which was cited with approval in the case of **CRDB (1996) Limited Vs. George Kilindu**, Civil Appeal No 162 of 2006 CAT (Unreported). The Applicant's counsel insisted that, the Applicant was not negligent in pursuing his right he accounted for the delay hence, sufficient reasons for extension of time.

Opposing the application, the Respondent contended that the Applicant has not adduced sufficient reason nor accounted for each day of delay to convince the court to grant the application. That, the Applicant seeks to challenge a decision that was delivered on 25th July,

2022 and the said decision was availed to the Applicant on time. That, since the Applicant was well represented by the learned counsel one Frida Magesa, they were in a position to note that the said decision had defect hence would have filed the application on time.

The Respondent also submitted that, the reasons for delay in filing the revision application on time are mere words with no proof that the Chairman of the DLHT informed the Applicant verbally that execution could not be effected. That, the Applicant has failed to advance reasonable and sufficient cause to convince this court to extend time hence, the case of **Rashid Awami Njowoka (supra)** is not applicable.

Citing the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No 2 of 2010 CAT (Unreported), the Respondent contended that it is well established principle of law that extension of time will only be granted upon showing good cause. That, in the present application the Applicant has failed to show diligence and account for each day of delay to warrant extension of time. The Respondent prayed that the application be dismissed with costs.

In a brief rejoinder the counsel for the Applicant insisted that the aim of filing the present application is necessitated by the Respondent's

action of staying in the suit land while the said right has been nullified by this court. That, the Applicant seeks for enlargement of time to file review in respect of the decision of this court in Revision Application No. 6 of 2022 for need of court directives.

Going through the rival arguments advanced by the parties to this application, the question for determination is whether the present application has merit. It is a trite principle that, the grant of extension of time is entirely upon the court's discretion, which, however, must be exercised judiciously.

More to say, grant of extension of time by any court is not automatic, the Applicant has to convince the court that he or she has reasonable and sufficient grounds for delay for the court to exercise its discretion in granting the order sought. See the case of **Benedict Mumello Vs. Bank of Tanzania**, Civil Appeal No. 12 of 2012, CAT.

In the present application, the Applicant stated that after the decision of Land revision No. 06 of 2021 was delivered by this court and pursuant annexure L2, the Applicant applied for the file transfer from this court to the DLHT for the purpose of applying for execution before the DLHT. Pursuant to annexure L3, on 05/09/2022 the Applicant wrote a letter to the Chairman of the DLHT requesting for effective completion of execution process before the DLHT. There is DLHT stamp indicating

that the same was received but nothing indicating that the DLHT responded to that request. Thus, this court is convinced to believe the Applicant's averment that on 19/09/2022 he was verbally informed that the execution could not be affected for want of High Court directives.

I am also convinced with the Applicant's further averment that he made follow to this court and was advised to file review but at that time he already out of time. As facts reveal, the Applicant was so directed by the Deputy Registrar on 11/11/2022 and he acted diligently by filing this application six days later, on 17/11/2022. The period of six days is reasonable for preparation of documents and filing in court. From the series of events above, it cannot be said that the Applicant was not diligent in pursuing his rights. The circumstance of this case gives a clear picture that the Applicant was acted sharply to pursue his rights after the decision of this court in Revision No. 6 of 2021 and if there was any hindrance, the same cannot be blamed on him. In the case of **Philemon Mang'ehe t/a Bukine Traders vs. Gesso Hebron Bajuta**, Civil Application No. 8 of 2016, CAT at Arusha, the Court of Appeal observed that;


"Taking into consideration the circumstances surrounding this case and the fact that the Applicant had not been sitting idle, I am of the considered view that good cause has been

established. As a result, extension of time is hereby granted to the Applicant to file his application for Reference."

For the reasons stated above and in considering that the Applicant's actions which shows promptness in taking steps, I find that Applicant's delay was reasonable and not inordinate in the circumstances of the case at hand. That being said, I find the application meritorious and deserve to be granted. The Applicant is hereby granted 14 days to file Review application before this court. In considering that this is an application for extension of time in which no party is to blame, I make no order as to costs.

DATED at ARUSHA this 17th day of July 2023.




D.C. KAMUZORA
JUDGE