

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

AT BUKOBA

LAND APPLICATION NO.116 OF 2022

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 407 of 2020 and Original Civil Case No. 25 of 2016 at Kanyangereko Ward Tribunal)

**MUGANYIZI KAHIMBA APPELLANT
VERSUS**

EDWINI RUTAGWELELA RESPONDENT

RULING

Date of last Order: 23.08.2023

Date of Ruling: 25.08.2023

A.Y. Mwenda, J.

This ruling emanates from the application made by the applicant one Mr. Muganyizi Kahimba. The applicant filed this application under section 14 (1) of the Law of Limitation Act [CAP 89 R.E 2019] seeking extension of time to file revision out of time. It is supported by the applicant's affidavit and in counter thereof, the respondent filed a sworn counter affidavit.

At the hearing of this application, the applicant was represented by Mr. Lameck Erasto John, the learned counsel while the respondent hired the legal services from one Mr. Dastan Mujaki, learned counsel.

During submission in chief Mr. Lameck prayed this court to adopt the applicant's affidavit to form part of his oral submissions. He went on to submit that the applicant seeks extension of time to file revision against execution order. The

reasons for that are that the applicant was not aware that there was a case filed against him before the Ward Tribunal until when he was served with a summons from the District Land and Housing Tribunal for execution purposes.

The learned counsel further submitted that, having received the summons, he made a follow up before the Ward Tribunal where he was supplied with a copy of the judgment. He submitted that during the hearing of the application for execution, the Ward Tribunal informed the District Land and Housing Tribunal that the Ward Tribunal's file is nowhere to be found. However, the District Land and Housing Tribunal proceeded with the hearing and the execution order was granted. He submitted that the said order aggrieved the applicant thus, on the same date, they wrote a letter requesting for the copy of ruling which was later on served to them on 26.05.2021.

The learned counsel went further by submitting that by the time the said order was served, the applicant was undergoing treatment at Muhimbili Hospital. He submitted that since he had no instructions, it was then difficult for him to proceed with the next step. He said that when the applicant came back from the hospital, they filed Land Application No. 17 of 2022 before this court seeking extension of time to file an appeal out of time but the same was marked withdrawn with leave to refile. However shortly thereafter the applicant felt sick again leading to the delay.

Regarding the issue of illegality, the learned counsel was of the view that the same constitutes sufficient reason for extension of time. He submitted that the tribunal records are tainted with illegality because the execution order was granted while District Land and Housing Tribunal had no original records from the Ward Tribunal. He said that despite being informed by the Ward Tribunal that the said file is nowhere to be found the District Land and Housing Tribunal ignored that concern and issued execution order. To support this point, he cited the case of AMOUR HABIB SALIM VS HUSSEIN BAFAGI, CIVIL APPLICATION NO. 52 OF 2009, CAT (Unreported) and the case of NYANZA ROADWORKS LIMITED VS GIOVANNI GUIDON, CIVIL APPEAL NO. 75 of 2020. He then concluded his submissions by praying this application to be allowed.

Responding to the submissions by the learned counsel for the applicant, Mr. Mujaki started by stating that it is trite law that litigation must come to an end. He supported this point by citing the case of TANZANIA TRANS CONTINENTAL TRADING COMPANY VS DESIGN PARTNERSHIP LTD [1999] TLR 258. He submitted that this matter has already being decided, the execution is complete and the respondent is in use of the land in dispute.

With regard to the alleged illegality Mr. Mujaki submitted that the judgment in Civil Case No. 25 of 2016 has never being challenged and as such it is still valid. He submitted that the ruling in Misc. Application No. 407 of 2020 before the District Land and Housing Tribunal was correct and valid. He was of the view that the issue of composition of the Ward Tribunal ought to be raised during

appeal hearing. According to him the issue of irregularity in Civil Case No 25 of 2016 is irrelevant because the order sought in the present application is to revise the decision in Application No. 407 of 2020.

Regarding the argument that the applicant was supplied with certified copy of the ruling on 29th May 2021, the learned counsel submitted that from 10th February 2021 when the ruling was delivered to 5th December 2022 when this application was presented for filing it is almost a year and six months which the applicant failed to account for each and every day of delay. Apart from that he also submitted that from when Land Application No. 17 of 2022 was marked withdrawn (i.e. 07.03.2022) to the date of filing of the present application, it is 9 months period which the applicant failed account.

Regarding the issue of sickness, the learned counsel submitted that after perusing the hospital report he noted that the applicant failed to account for each and every day of delay. He further submitted that the said hospital documents show that the applicant firstly attended at Jakaya Heart Institute on 11th May 2021 but he failed to account the reasons for the delay from 2016 to 2021 which is almost five years' time span.

In his conclusion, the learned counsel submitted that, the applicant failed to account for each and every day of delay as he acted negligently to pursue his right and therefore this application should be dismissed. To support this point,

he cited the case of MTENGETI MOHAMED VS BLANDINA MACHA, CIVIL APPLICATION NO. 344/17 OF 2022, CAT (Unreported).

In rejoinder Mr. Lameck submitted that the maxim that litigation has to come to an end is a correct legal proposition but it is misplaced as in this matter, the applicant has never filed multiple cases against the respondent. He further submitted that the applicant intends to challenge the execution process before the District Land and Housing Tribunal.

With regard to the applicant's sickness, he rejoindered that the applicant did account for each and every day of delay as per attached hospital documents. He therefore prayed this application to be allowed.

Having gone through submissions by the learned counsels, it is clear that this court has discretionary powers to grant or refuse application for extension of time. However, such discretion has to be exercised judiciously according to the rule and principle of natural justice. The guiding principle in granting an application for extension of time is that the applicant must demonstrate sufficient cause or reasons for the delay. Good cause or sufficient reason is highlighted in various decisions of the court. In the case of LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF TRUSTEE OF YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION 2 OF 2010, four principles which guide the court before exercising its discretion were laid down, these are;

- a) The applicant must account for all the period of delay.
- b) The delay should not be inordinate.
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take and
- d) If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.

That being the legal position the issue in this application is whether the applicant advanced sufficient reasons for the delay.

From the applicant's side two reasons to support this application were tabled and discussed. One is the applicant's sickness and two, illegalities on the tribunal's records (i.e. the District Land and Housing Tribunal and the Ward Tribunal).

With regard to the issue of sickness it was submitted from the applicant's side that when the applicant was supplied with the copy of execution order on 26.05.2021 he was undergoing treatments at Muhimbili National hospital. According to his advocate he failed to proceed with other steps as he had no instructions to do so and he added in that when the applicant came back from treatments, they filed application for extension of time which was marked withdrawn. They further alleged that having withdrawn the said application, the applicant fell sick again hence the delay in filing revision in time. I have put the reasons for delay under scrutiny only to find them unjustifiable. In one of

the reasons, the applicant alleges that after withdrawal of Land Application No. 17 of 2022 with leave to refile, the applicant's advocate did nothing as he had no instructions. One may wonder if the same advocate prayed to withdraw the said application with leave to refile, what instructions was he waiting for from the applicant. This to me is nothing other than negligence on the part of the applicant. On top of that, the applicant's allegations that his sickness contributed to his delay left a number of days unaccounted for. From when the execution order was issued to the date of filing this application there is a span of almost two years. The hospital chits which were appended to the applicant's affidavit (annexture G) failed to account for the whole period of two years. In that regard, this court is of the view that the applicant did not account for each and every day of delay.

On the second point alleging illegality on the District Land and Housing Tribunal's records, the learned counsel for the applicant submitted that the execution order was granted while the District Land and Housing tribunal had no Ward Tribunal's original records. He submitted that the Ward tribunal informed the Hon. chairman of the District Land and Housing tribunal that the original file was missing but the tribunal proceeded with the execution process. According to him this is a serious illegality which can be cured during revision. This court went through the record and noted existence of serious illegality of the Lower Tribunal's records. The records reveal that having received the Misc. Application No. 407 of 2020, the District Land and Housing Tribunal called for

the records of the Ward Tribunal's Civil Case No. 25 of 2016, Kanyangereko Ward Tribunal. The response from the ward Tribunal was that the file in question was nowhere to be found despite seen as being registered. On top of that the Ward Tribunal said that even some of the members (assessors) who were mentioned in the said case were not in service during that time. This letter was annexed to the applicant's affidavit as annexure "C" and was not apposed by the adverse party. Despite being availed with such information, the District Land and Housing Tribunal ignored the said concern and proceeded with the hearing and issued an order for execution.

From what is gathered in the record, it is apposite to point out that original records are fundamental in determination of any matter before the appellate court or tribunal. It is only from the original record where the Hon. Chairman can determine the legality of the proceeding before the lower tribunal. In this matter, since the Ward Tribunal informed the District Land and Housing Tribunal that there was no original file for Civil Case No. 25 of 2016, and since the said tribunal said even the names of the Hon. Members appearing on the purported copy of the said suit never existed in the period in question, then there is a lot of doubt as to whether the said case was ever heard before the Ward Tribunal. With this doubt, I am not convinced with what Mr. Mujaki submitted that the Ward Tribunal's judgment is still valid. I am thus convinced that this issue has to be dealt with in the cause of determination of the validity of the execution order.

Basing on the above analysis this application is hereby allowed. The applicant is thus ordered to file his application within fourteen (14) days from the date of this ruling.

Each party shall bear its own costs.

It is so ordered.

A.Y.Mwenda
Judge
25.08.2023

This Ruling was delivered in chamber under the Seal of this Court in the presence of Mr. Muganyizi Kahimba the applicant and in the presence of Mr. Edwini Rutagwelela the respondent.

A.Y.Mwenda
Judge
25.08.2023