

**IN THE HIGH COURT OF
THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 491 OF 2019

**USAFIRISHAJI MIKOANI
UNION LIMITEDAPPLICANT**

VERSUS

**MINISTER FOR LANDS, HOUSING AND
HUMAN SETTLEMENTS DEVELOPMENT.....1ST RESPONDENT
ASSISTANT LAND COMMISSIONER,
EASTERN ZONE.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT**

Date of Last Order: 24.08.2020
Date of Judgment: 04.09.2020

RULING

V.L. MAKANI, J.

This is an application for extension of time within which to file an application for leave to apply for orders of certiorari removing into the High Court of Tanzania Land Division and quash the decision of the respondents to revoke the applicant's right of occupancy on Farm No. 6 Ruipa, Kilombero District with Title No. 33512 registered in the name of the USAFIRISHAJI MIKOANI UNION LIMITED, the applicant herein.

The application is made under Rule 17 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, section 14(1) of the Law of Limitation Act CAP89 RE 2002 and section 2(3) of the Judicature and Application of

Laws Act, CAP 358 RE 2002; and is supported by the affidavits of Frida Samwel Liweuli, the director of the applicant and Mashaka Ngole, Advocate representing the applicant. The counter-affidavit for the respondents was sworn by Hellen Phillip, Land Officer from the Office of the 1st defendant.

The application was argued by way of written submissions where the applicant's submissions were jointly drawn and filed by Daimu Halfani and Mashaka Ngole, Advocates. The submissions by the respondents were drawn and filed by Stanley Kalokola, State Attorney.

The learned advocates for the applicant in their submissions adopted the contents of the affidavits sworn by Frida Samwel Liweuli and Mashaka Ngole. The reasons for extension of time as observed from the submissions is that the applicant was not afforded an opportunity to be heard before the revocation of her Right of Occupancy on Farm No. 6 Ruipa, Kilombero District with Title No. 33512 registered in the name of the USAFIRISHAJI MIKOANI UNION LIMITED (the **suit land**). Learned Counsel submitted that the applicant was not aware of the purported revocation and there was no notice of the said revocation until when the applicant received the counter-affidavit of the respondents on 05/11/2019, that is when she became aware that there was the Revocation (**Annexure OSG-1** to the counter-affidavit), Notice to Remedy Breach of Condition (**Annexure OSG-2** to the counter-affidavit) and Notice of Revocation (**Annexure OSG-3** to the counter-affidavit). They said the Notice of Revocation and the Notice to Remedy Breach of Condition were documents that were supposed to be served on the applicant before the revocation. In that

Responding on behalf of the respondent, Mr. Kalokola gave the principles underlying grant of extension of time. As a matter of general principle, he said it is the discretion of the court to grant extension of time, but the discretion is exercised judiciously. He relied upon the case of **Lyamuya Construction Company Limited vs. The Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT-Arusha)**(unreported) which also gave other principles such as delay must be accounted for, the delay should not be inordinate, the applicant must show diligence in prosecuting the action he intends to take and any other reason the court may deem fit such as the illegality of the decision sought to be challenged.

Mr. Kalokola pointed out that the applicant intends to challenge the revocation of the Right of Occupancy by way of judicial review. The time limit for which to institute such judicial review is six months as provided for under section 19(2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, 2014 (**GN No. 324 of 2014**). However according to the affidavit by Frida Samwel she was aware of the revocation as she was shown a letter Ref. MG/LD/5428/SGM of 19/12/2016 and thus was informed of the revocation by the Representative of Wananchi Chiwachiwa Village and also by the Mbingu Ward Executive Director. She also acknowledged that the revocation was gazetted in Government Gazette of 12/08/2016; Mr. Kalokola wondered how it was possible for the villagers and local authority to be aware that the suit land was revoked while the owner was unaware. He, however,

observed that upon receipt of the information the applicant ought to have acted promptly after she became aware of this information in March, 2017. He said it took the applicant four months to take legal action and their application for extension of time was withdrawn with leave to re-file on 19/09/2018. He said the withdrawal of the application depicts negligence on the part of the applicant and thus the delay was occasioned by the applicant's fault. He said the applicant and her advocates were not diligent enough to take quick action to seek court's intervention. He relied upon the case of **Kambona Charles (as Administrator of the Estate of the Late Charles Pangani) vs. Elizabeth Charles, Civil application No. 529 of 2017** (CAT-DSM)(unreported) where it was held that negligence of an advocate cannot constitute a ground for condonation of delay but a minor lapse committed in good faith can be ignored.

On allegation that the delay was caused by Mr. Dingh'oi the Registrar, Mr. Kalokola said the allegation is not supported by evidence. The names of the advocates who made follow-up at the Registrar's office were not mentioned and there was no affidavit by the Registrar that he received the application and that the said application got lost. He said it was therefore difficult to believe the authenticity and reliability of these facts.

As for the illegality of the decision of the respondents, learned State Attorney submitted that Frida Samwel in her affidavit has admitted that she was aware of the decision of the respondents from the Representative of the Wananchi of Chiwachiwa Village and from Executive Director of Mbingu Ward. He said Hellen Phillip said in her

affidavit that the revocation was published in the Government Gazette and this was to give the public including the applicant, information of the said revocation to enable them take action within a reasonable time instead the applicant did not take any legal action within time. Mr. Kalokola further contended that the illegality in the present case is not apparent as it was emphasized in **Lyamuya Constrution Company Limited** (supra) and in the case of **Bharya Engineering & Contracting Company Limited vs. Hamoud Ahmed Nossor, Civil Application No. 342/01 of 2017** (CAT-Tabora) (unreported).

In their rejoinder, the learned advocates for the applicant stated that the learned advocate for the respondent does not dispute the fact that the applicant was not served with the notices and the letter Ref. MG/LD/5428/SGM dated 19/09/2016 was not addressed to the applicant and even if the applicant had seen the said letter the information was still not enough to enable her file an application. The advocates emphasized that the only documents which could assist the applicant were the Notice of Remedy of Breach Condition, the Notice of Revocation and the Revocation itself. The learned advocates further pointed out that the Mbingu Ward Councillor and the Representative of Wananchi of Chiwachiwa Village had neither interest nor right over the suit land.

As to the accounting of the days of delay, advocates for the plaintiff stated that important information was withheld as they were yet to receive the Notice of Remedy of Breach Condition, the Notice of Revocation and the Revocation to enable the applicant to challenge the said revocation. They said that the did not waste any time neither

was she sloppy. The delay could not have been occasioned by the applicant as she was not in the possession of the vital documents so she could not have filed the application for judicial review. They insisted that the applicant became aware of the said documents on 05/09/2019. As for the affidavit from the Registrar, learned advocates pointed out that the complaint is against the Office of the Registrar so one would not expect an affidavit from the Registrar or any other Registry Officer. The learned advocates reiterated that the illegalities and irregularities are well known, and these are valid reasons for extension of time. They submitted that the applicant has shown the irregularities an illegality in the revocation and its process which are sufficient grounds for extending time. They reiterated their prayers in their main submissions and chamber summons.

I have gone through the application, affidavit, counter-affidavit and the submissions by learned Advocates. The issue for determination is whether the applicant has advanced sufficient reasons to warrant the grant of extension of time to file the application for Judicial Review.

It is a set principle of the law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. This has been elucidated in various cases including the case of **Benedict Mumello vs. Bank of Tanzania, Civil Appeal No. 12 of 2002 (CAT)** (unreported).

The main reason for the failure by the applicant to file the application within time is thoroughly elaborated in the affidavit by Frida Samwel and it can be drawn down into two phases. Firstly, the applicant was not served with the necessary documents pertaining to the revocation, that is, the Revocation, Notice to Remedy Breach of Condition and Notice of Revocation. When the applicants became aware of the revocation from the Ward Executive Director of Mbingu, she engaged advocates who inquired from the respondents by way of a letter seeking confirmation, clarification and details of the revocation which letter has not been responded to date. That, they made thorough search through internet and discovered that there was a Government Gazette of 12/08/2017 showing that revocation was made by the 1st respondent. And further a thorough search at the Land registry showed that the Land had been revoked in 19/08/2016.

Secondly, when the applicant decided to file the application for extension of time having discovered that they were out of time for an application for Judicial Review. The initial application for extension of time was withdrawn on 19/08/2018 with leave to refile, and the applicant filed another application on 21/08/2018 which was misplaced hence this application filed on 03/09/2019.

It is apparent that the applicant was not idle, but she made efforts in seeking for her rights. When she became aware of the alleged revocation, she sought the assistance of advocates who initially made searches and enquiries to know what was going on. And after finding out that there was revocation, they decided to come to court by way

of judicial review, but they were already out of time. They filed an initial application which was withdrawn and immediately thereafter another application was filed but misplaced and the Applicant's advocate made follow-ups as can be observed in Annexure G and H to the affidavit. These efforts by the applicant cannot be ignored as they reflect that, indeed, the applicant struggled to ensure that she is heard on her application. And the actions by the applicant thereof accounts for the delay as to the filing of this application for extension of time in terms of **Lyamuya Constrution Company Limited** (supra).

In the circumstances, I am satisfied that the applicant has given good reasons to warrant this court to exercise its discretion to extend the time within which to file an application for Judicial Review. Subsequently, the application is hereby granted with costs, and the applicant is ordered to file the application for orders of Certiorari within **fourteen days (14) days** from the date of this ruling.


V.L. MAKANI
JUDGE
04/09/2020

