

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

**MISC. LAND CASE APPLICATION NO 489 OF 2019**

(Arising from Land Case No.43 of 2011)

**MARIAM Y. ABEID.....APPLICANT**

**VERSUS**

**KURAISHI IDRIS KOSKU.....1<sup>ST</sup> RESPONDENT**

**ZIAUL-ISLAM ABDULAZIZ.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 16.11.2020  
Date of Ruling : 18.12.2020

**RULING**

**V.L. MAKANI, J**

The applicant MARIAM Y. ABEID is seeking for orders of extension of time within which to file an application for review in respect of the judgment in Land Case No.43 of 2011 (Hon. Mgetta, J) delivered on 13/11/2015.

The application is made under section 14(1) of the Law of Limitation Act, CAP 89, RE 2002 (the **Limitation Act**) and section 95 of the Civil Procedure Code CAP 33 RE 2002 (the **CPC**) and any other enabling

provision of the Law. The application is supported by the affidavit sworn by the applicant.

The application was argued by the way of written submissions. The applicant's submissions were drawn and filed by Mr. Daniel A. Lisanga, Advocate, while Mr. David A. Ntonge, Advocate drew and filed submissions on behalf of the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent did not file his submissions and so the matter proceeded ex-parte against him.

Submitting in support of the application, Mr. Lisanga said the reasons for the applicant's delay in filing review was that she was following up a new survey and the creature of new plot No.1005 and 1051 Block 40 Kinondoni area. He said the survey was done by an innocent lady full of the age of majority with intention to secure the piece of land which remains under her ownership after the new survey. In exercise of the survey the applicant reported several times to Kinondoni Municipal Council but there was no progress of what was prescribed by the High Court in Land Case No. 43 of 2011. He said that the exercise was very tough and time consuming which rendered negative results. He said that the outcome made the judgment debtor doubtful

as to the legality of the exercise contrary to the pronounced judgment. He said that the follow up process took very long because of the bureaucracy which the applicant was facing.

Mr. Lisanga further stated that, the applicant also made enquiries and paid several visits at the Ministry of Lands and Human Settlement Development on the need to be granted new Certificate of Title for assurance of ownership. He said that the applicant conducted due diligence in terms of lodging official search to the Ministry to note the legality of the transaction of creature and allocation of new plot No.1005 reported to cover part of plot No.1051 Block 40 Kinondoni Area. He said that the follow up consumed long time by the applicant who used to visit the relevant land authorities until the time for appeal lapsed.

Mr. Lisanga went on submitting that the outcome of the research of Plot 1005 revealed that the piece of land is not in the record of the Registry of the Ministry of Lands. He said that this vital information was contained in the official search result from the Land Registry dated 05/08/2019. He said that it was therefore important for the applicant to seek redress by way of review. Further he said that, the

search revealed the same Plot No. 1051 was acquired by his Excellency the President of the United Republic of Tanzania by virtue of rectification of Right of Occupancy vide FD No.133570 dated 13/01/2011. He therefore said that the 2<sup>nd</sup> respondent had no legal right to occupy the piece of land known as Plot No.1051 Block 40 Kinondoni as it did not belong to him. He further said that the 1<sup>st</sup> respondent had attempted to evict the applicant from her matrimonial home by employing the service of Majembe Auction Mart. He said that 14 days' notice was issued on 19/08/2019 without due regard that the suit land was not clearly demarcated and registered. He insisted that he has good and sufficient reasons for filing review. He prayed for the grant of this application.

In reply, Mr. Ntonge pointed out that this was an application for extension of time to file review; but according to the submissions filed the arguments were directed to an application for review. He said an application for extension of time depends on the discretion of the court under the laid principles that sufficient reasons must be given. The discretion has to be judicial and exercised according to the rules of reason and justice. Mr. Ntonge cited various cases to support this argument including the case of **Republic vs. Yona Kapunda & 9**

**Others [1985] TLR 84, Daudi Haga vs. Jentha Abdan Machaju, Civil Reference No. 1 of 2002, Adam Sadiki vs. Mwamanza Nije Matibwa, Misc. Civil Application No. 3 of 2002 (CAT) (unreported) and Tanzania Fish Processors Limited vs. Christopher Luhangagula, Civil Appeal No. 161 of 1994 (CAT)(unreported).**

Mr. Ntonge pointed out that in Land Case No. 43 of 2011 which is subject of this application there was no issue of ownership of the disputed land. He said according to the applicant's submissions, the applicant was processing afresh the documents she has mentioned above. He said that the documents seem to be new and dealt with a new matter, not the Land Case No.43 of 2011. He said that the follow-ups by the applicant cannot at any stretch of imagination be termed as new evidence pertaining to the matter at hand. He insisted that the said new evidence were not in existence in the Land Case No.43 of 2011 and therefore cannot be taken to be in existence retrospectively. Basing on that he insisted that the applicant has failed to account for the days of delay. He said that the evidence or new matters (if any) seems to be enshrined after the conclusion of the matter at hand and so they don't form any part of the dispute in

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- Land Case No.43 of 2011 to be entertained in review as the evidence which was not within the applicant's knowledge. He wondered the essence of the applicant's submissions that the result of the applicant's search over Plot No.1005 had no records in the Land Registry regarding its creation since it is owned by his Excellency the President and was surprised why the applicant was bringing the claim over the land owned by the President. He insisted that during the hearing of the Land Case No.43 of 2011 the applicant's witnesses had nothing to hide or fail to produce any important evidence which was not within their knowledge to justify grant of the application. He said that the evidence purported to be missing during the hearing were tendered before the Honourable Court prior to the delivery of judgment and decree. He insisted that the applicant is not justified to bring the application for review since there is no discovery of new important matters which were not within the applicant's knowledge when the matter was heard. For example, he said, the applicant's Title No.84220 which the applicant purports to be new evidence, was tendered and admitted as "P1". He insisted that there has been no harassment from the first respondent through auctioneers. He prayed for the dismissal of this application with costs.

There was no rejoinder that was filed by the applicant.

I have gone through the rival submissions by the learned Advocates for the parties. The crucial issue in this application is whether sufficient cause has been established by the applicant to enable the court to grant extension of time to file an application for review.

The position of the law is clear that the court may for any reasonable or sufficient cause extend the period of limitation for institution of such application. In the case of **Lyamuya Construction Company Limited (supra) vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT- Arusha)** (unreported), the Court of Appeal outlined the following four factors to be considered in considering an application for extension of time:

- (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 he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

The applicant's main reason for delay in this application is that, she was making a follow-up of the new survey and the creature of new Plot No.1005 and 1051 Block 40 Kinondoni Area. In reply Counsel for respondents said that the reason was not sufficient as the applicant had failed to account for every single day of the delay to file the application.

The main question is how many days has the applicant delayed in filing this application? The judgment intended for review (Land Case No.43 of 2011) was delivered on 13/11/2015. This application was filed on 30/08/2019. It is without doubt that this application has been filed three years after the delivery of judgment in Land Case No.43 of 2011. And according to the affidavit and submissions, during these years the applicant was searching for new evidence which was not available while the case was proceeding. The only proof on record that reveals that the applicant was making a follow-up are the official searches of 15<sup>th</sup>, 20<sup>th</sup> and 27<sup>th</sup> August, 2019 (**Annexure B** to the affidavit collectively). Now, what is the proof showing that there was follow-up in between 2015 to 2019? There is none, and considering that the judgment was delivered in 2015, this confirms that the three



years are unaccounted for. It was expected that the applicant would have given an account for the delay with sufficient proof of what transpired in between these years, but in the contrary, there is only a general assertion that the she was looking for evidence which statement does not suffice considering that three years has lapsed which constitutes an inordinate delay.

In **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (CAT)** (unreported) it was stated:

*"Delay of even 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".*

Three years is a long period which ought to have been well accounted for. Failure to account for the delay renders this application devoid of merit.

Mr. Lisanga in his submissions has tried to give reasons for the application as follow up of new survey, follow-up of new Certificate of Title, the outcome of official searches conducted in respect of Plots No. 1005 and Plots No. 1051 and also harassment by the 1<sup>st</sup> respondent by employing the services of Auctioneers. As correctly stated by Mr. Ntonge, these are not reasons for extension of time but

rather they go to the root of the application for review itself. In the result, I shall not engross myself to address them as I will be determining the application for review prematurely.

In the result and for the reasons stated above, the application is hereby dismissed with costs.

It is so ordered.



*V.L. Makani*

**V.L. MAKANI  
JUDGE  
18/12/2020**