

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

MISC. LAND CASE APPLICATION No. 117 OF 2020

SHANGWE MJEMA.....APPLICANT

VERSUS

FLORA MARO MGALLA.....1ST RESPONDENT
AMINIEL MBWAMBO.....2ND RESPONDENT

Date of Last Order: 07.06.2021
Date of Ruling: 12.07.2021

RULING

V.L. MAKANI, J

The applicant SHANGWE MJEMA has moved this court under section 14(1) of the Law of Limitation Act, Cap 89 RE 2002 and section 93 of the Civil Procedure Code, Cap 33 RE 2002 seeking for extension of time to file an application for revision against the judgment and decree of the District Land and Housing Tribunal for Kibaha (the **Tribunal**) in Application No.09 of 2017. The application is supported by the affidavit of the applicant.

The court ordered the matter to proceed by way of written submissions. The applicant personally drew and filed his own submissions, likewise the 1st respondent drew and filed submissions

in reply. The 2nd respondent did not file any submissions and therefore the matter proceeded ex-parte against him.

Submitting in support of the application the applicant said in his affidavit that he is the rightful owner of the suit land, which was in dispute in Misc. Land Application No.09 of 2017 between 1st and 2nd respondents in which the judgment was delivered on 23/02/2018. He said he legally purchased the suit land from the 2nd respondent and built therein an intended guest house which is halfway. He said that he was not made aware of what transpired in the said Misc. Land Application No.09 of 2017 filed by the 1st respondent. He went on saying that delay to file revision was caused by refusal of the Chairman of the Tribunal to supply him with copies of the proceedings and ruling in the main application and that of the preliminary objection on the ground that he was not party to the case. The applicant further said, the filing of Objection Proceedings No.438 of 2018 and follow up to the Deputy Registrar for the copies, constitute sufficient reasons for extension of time to file the application for revision. He added that ruling in Misc. Application No. 09 of 2017 was delivered on 23/02/2018, the copies were supplied to the 2nd respondent herein on 04/05/2018, about 72 days from the date of ruling. That he could not

file the application for revision immediately because there was a police case still in investigation and that the 2nd respondent had already filed Petition of Appeal No.582 of 2018 in this court; and when the 2nd respondent opted to withdraw the petition of appeal sometime in February 2020, that is, when he prepared this application. He insisted that to date he has not been supplied with the ruling and proceedings of the Tribunal. He insisted that all paragraphs are subject to paragraph 13 of his affidavit which contains his reasons for delay. He added that there were several irregularities by the Chairperson which intended to cause damages and loss. He prayed for the application to be granted.

In reply the 1st respondent prayed to adopt her counter affidavit and added that the law requires the applicant to give sufficient cause for the court to grant the prayers for extension of time sought. She said that it is difficult to pick what exactly the applicant was referring and submitting on, as he submitted as if he has already been granted extension of time. She said that it is trite law that the applicant has to satisfy the court that the delay has merit and that each day of delay must be accounted for. She said that the impugned judgment was delivered on 23/02/2018 and the 2nd respondent collected the copies

on 04/05/2018, meaning that by May 2018 the applicant and the 2nd respondent had their copies. She said that the applicant filed this application on 12/03/2020 which is 450 days after the delivery of the judgment. She said that the applicant was not serious, and he has not explained in his submission why it took so long to file this application. She said she has tried to make the litigation to come to an end, but the applicant and the 2nd respondent are constantly filing endless applications on the same subject matter in different courts. That the 2nd respondent has filed Application No.182 of 2020 at Kibaha District Land and Housing Tribunal claiming ownership of the same land. She prayed for the application to be dismissed with costs.

In rejoinder the applicant reiterated the contents in the main submissions and added that he was not party in Misc. Application No.09 of 2017 as he was not joined and was not aware of the disputed land.

Having gone through affidavits and submission by the parties, the main issue for determination is whether this application has merit. It is a settled principle of the law that an application for extension of time is entirely the discretion of the court, and extension of time may

only be granted where it has been sufficiently established that the delay was with satisfactory cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam (unreported).**

The main reasons advanced by the applicant for his delay to file the application for revision are generally three; one, that he was not aware of, and not part to the Misc. Application No.09 of 2017, two, that the Tribunal delayed to issue copies of the proceedings and the decision and, three, that there are irregularities in the Tribunal's decision.

Looking at the record, it is without dispute that the applicant herein was not part to Misc. Application No.09 of 2017 in which he intends to file revision against. In the said application parties were Flora Maro Mgala (the 1st respondent herein) against Aminiél Mbwambo (the 2nd respondent herein) and Msolopa Court Broker. Having found that the applicant was not party in Misc. Application No.09 of 2017, the question now is when did the applicant become aware of the decision in this application? The applicant does not state with certainty as to when he became aware of the decision in Misc. Application No.09 of

2017. He said, when he immediately became aware of the said decision, he decided to file objection proceedings vide Misc. Application No.438 of 2018. However, the applicant does not state when exactly he filed the said objection proceedings. The reference of the said objection proceedings (Misc. Application No. 438 of 2018) suggests that it was filed in the year 2018. The impugned judgment was delivered in 23/02/2018, the copies were supplied to the 2nd respondent on 04/05/2018 and the fact that objection proceedings by the applicant herein were filed in the year 2018 it presumably shows that the applicant was aware of the impugned decision on the year that he filed the objection proceedings, that is, the year 2018. But this application has been filed on 12/03/2020. That is more than 400 days from when the applicant became aware of the impugned decision. Yet the applicant claims that the delay was attributed by Petition of Appeal filed by the 2nd respondent, which was withdrawn in February 2020, however, there is no evidence on record showing the existence of such Notice of Appeal. These averments are unsubstantiated, and it is unsafe for this court to rely on them. The position therefore remains that the applicant was aware of the impugned decision in 2018 but he filed this application on 12/03/2020 which is more than 400 days.

The law places discretionary powers in granting extension of time to the court, however the same law requires the applicant to account for every single day of delay. In the case of **Bushir Hassan vs. Latifa Lukiko Mashayo, Civil Application No 3 Of 2007** (unreported) the Court of Appeal held that:

" 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".

The applicant has not managed to account for more than 400 days of his delay, such delay is so inordinate that this court cannot simply ignore. In the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT)**(unreported), the Court of Appeal outlined the following four factors to be considered:

- (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.*

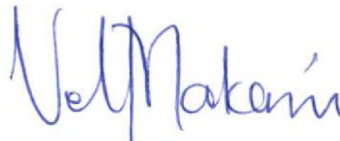
It is apparent that the applicant in this present application has failed to account for the period of the delay which in my view was inordinate.

The applicant raised the issue of illegality of the decision of the Tribunal. Indeed, it is now settled, that an alleged illegality has to be apparent on the face of the record. Once it is established that the illegality in the impugned decision is clearly visible on the face of record, then it can be termed as a sufficient cause to warrant extension of time (see the case of **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported)).

In the present application the illegality alleged is not quite apparent. The applicant merely mentions; the suit is incompetent, bad in law, mis concerned (sic!), abuse of court process for misjoinder of parties and lack of pecuniary jurisdiction. The applicant does not state in detail the alleged illegality. The court cannot take a role of digging out the alleged illegality because by doing so it can no longer be said that the illegality is apparent on the face of the record. In view thereof, this ground cannot be taken to be a reason for the delay by the applicant to file the application for revision.

Basing on the above, it is apparent that no sufficient reasons have been duly advanced to warrant extension of time. I therefore proceed to dismiss this application with costs for want of merit.

It is so ordered.



V.L. MAKANI
JUDGE
12/07/2021

