

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

MISC. LAND CASE APPLICATION No.564 OF 2020

MICHAEL TUGARA CHACHA.....APPLICANT

VERSUS

JOHN BERNARD MASSAWE.....RESPONDENT

Date of Last Order: 14.07.2021
Date of Ruling: 20.08.2021

RULING

V.L. MAKANI, J

The applicant has moved this court under section 14(1) of the Law of Limitation Act, Cap 89 RE 2019 seeking for extension of time to file an application to set aside dismissal order in Misc. Land Application No.316 of 2016 (Hon. Makuru, J). The application is supported by the affidavit of the applicant.

The court ordered for this matter to be argued by way of written submissions. Mr. Khalid Rwebangira, Advocate drew and filed the

main submissions on behalf of the applicant. The reply on behalf of the respondent was drawn and filed by Mr. Norbert Mlwale, Advocate.

Submitting in support of the application, Mr. Rwebangira said that the reasons for extension of time are contained in paragraphs 5,8,9 and 10 of the supporting affidavit. He said that since the dismissal of Misc. Land Application No. No.316/2016 the applicant has been in court pursuing different applications seeking restoration of the afore mentioned application. He added that following the ruling of this court dated 31/08/2020 in Misc. Land Application No.214 of 2019 the applicant ought to have lodged a fresh application soon thereafter. That the filing of a fresh application is subject to availability of the correct copies of ruling and order. That the applicant on 01/09/2020 wrote a letter requesting copies of ruling and drawn order. He said that upon close follow-up, the copies were collected on 29/09/2020 and that fact is not disputed by the respondent in the counter affidavit. He said that upon collection of the copies, 29 days had already lapsed. He insisted that the applicant acted diligently in prosecution of this application and it was struck out on 31/08/2020. He said that on 05/10/2020 the application was filed on e-filing system and upon admission on 05/10/2020 the applicant presented

the application for filling. He relied on a number of cases among which is the case of **Yusuph Same & Another vs. Hadija Yusuph, Civil Application No.1 Of 2002 (CAT-DSM)** in which he said the Court ruled that an application for extension of time is entirely in the discretion of the court to grant or refuse it, however the discretion has to be exercised judicially and the overriding consideration is that there must be sufficient cause. Mr. Rwebangira insisted that the intention of the applicant is to place the argument that the error apparent on the face of the record has made the decision of the trial court to be illegal. He thus prayed for the application to be granted with costs.

In reply, Advocate Mlwale prayed to adopt the contents of the respondent's counter affidavit. He said that he has not been served with the main submission by the applicant. That his reply is based on the affidavit and counter affidavit. He said that the applicant has stated under paragraph 2 ,5, 6 and 8 of the affidavit that he filed in this court Misc. Land Application No. No.316/2016 seeking extension of time to file revision against the decision of the District Land and Housing Tribunal for Kinondoni in Misc. Application No.234/2012. That Misc. Land Application No. No.316/2016 was dismissed for want

of prosecution and that it was restored vide Misc. Land application No.496/2017 which was heard orally. That according to paragraph 6 of the affidavit after restoration the same was set for hearing. That the main submission be filed on 10/10/2018, reply by 24/10/2018 and rejoinder by 31/10/2018. He said that according to paragraph 8 of applicant's affidavit the applicant failed to file his submission in chief as a result on 11/01/2019 Misc. Land Application No. No.316/2016 was dismissed for want of prosecution. That the series of these events is a manifestation of lack of good cause. He said the applicant's failure to prosecute Misc. Land Application No. No.316/2016 twice cannot be said by the applicant to be a sufficient cause within the ambit of the law. That the order which dismissed Misc. Land Application No. No.316/201 was delivered on 11/01/2019 and this present application was filed on 05/10/2020 therefore 30 days within which the application should have been filed lapsed on 11/02/2019, that is 20 months after the lapse of statutory time (30 days) within which the applicant could file this application to set aside the dismissal order. He said that 20 months is too long and unaccounted for. He relied in the case of **MPS Oil Tanzania Limited And 2 Others vs. CITI Bank Tanzania Limited, Civil Appeal No.4 of 2016 (CAT-DSM)** (unreported) in which among other things it was ruled that the

applicant must account for every day of delay. He said that the fact that Misc. Land Application No.214 of 2019 was struck out for being incompetent is a sufficient ground that the applicant was negligent and sloppy in pursuing the application for extension of time. He added that the applicant has filed the present application as a fourth bite after failing to prosecute several previous applications.

On the issue of illegality Advocate Mlwale said that there is no illegality apparent on the face of the records in Misc. Land Application No.214 of 2019 for which enlargement of time is sought to revise it, rather the applicant is invoking illegality to hide his negligence to prosecute previous similar application, that is, Misc. Land Application No. No.316 of 2016 which was set for hearing twice, but the applicant did not prosecute it. He relied on the case of **Wambura N.J. Waryuba vs. The Principal Secretary Ministry of Finance And Another, Civil Application No.225/01 Of 2019 (CAT-DSM)** (unreported) in which among other things it was observed that the alleged illegality must be apparent on the face of the impugned ruling. He prayed for this application to be dismissed with costs.

The applicant did not file any rejoinder submission.

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 to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported).

The record of this application reveals that the applicant has had numerous applications in relation to extension of time to file revision in this court. Misc. Land Application No. No.316 of 2016 was struck out for want of prosecution. The same was restored through Misc. Land Application No 496 of 2017. However, it was again dismissed for what is admitted in paragraph 7 and 8 of affidavit to be applicant's own mistake. The same was dismissed on 11/01/2019. Again, the applicant filed Misc. Application No.214 of 2019 to set aside the dismissal order in Misc. Land Application No.496 of 2017. The same was on 31/08/2020 struck out on a preliminary point of objection.

Now, the applicant has come to this court presently claiming to have wrote a request letter for copies of the ruling on 01/09/2020. However, he has no evidence of the request letter. He stated that the letter got lost and the copy of the same is on the court's records meanwhile claiming that he was delayed for 29 days. With due respect to the learned Counsel, it is not the duty of this court to dig through the court's record so as to avail a party with evidence. The court deals only with the evidence presented during the proceedings. If at all Counsel firmly believed that the said copies were in the court's record, he should have followed the procedure in procuring the same and present it in the proceedings or rather secure an affidavit of the person who has custody of the copies thereof. In the absence of that the court cannot simply believe that the applicant requested for the copies on the mentioned date; and therefore, no blame can be placed on the court for the procurement and/or delay of the copies as no one is sure if the applicant really requested for the same. Therefore, the reason stated by the applicant of delayed receipt of copies of the judgment and proceedings cannot substantiate extension of time. 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), among other things, it was stated that the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

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 caused by applicants' negligence. In that regard the reason raised by the applicant is not sufficient to move this court to exercise its power to grant extension of time.

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 in Misc. Land Application No.234 of 2012 as contained in paragraph 13 of the

affidavit is not quite apparent on the face of the record. Things like double execution, execution by unlawful body in the name of *Serikali ya Mtaa* and the like cannot easily be substantiated on the face of the record unless further and through analysis is made. If the court takes the role of digging out the alleged illegality it will no longer be said to be illegality, in terms of **Moto Matiko Mabanga** (supra) as the illegality would not be 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 application for revision.

Basing on the above, it is evident that no sufficient reason has been 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
20/08/2021

