

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

MISC. LAND CASE APPLICATION NO.565 OF 2022

*{Arising from Land Application No. 401 of 2016, by Kinondoni District
Land and Housing Tribunal, before Hon. L.R Rugalabamu}*

MENGI OBEMI MWAKISOLE.....1ST APPLICANT

ALPHIUS CYPRIAN KAIJAGE2ND APPLICANT

VERSUS

SELEMAN WAKINDA JOEL.....1ST RESPONDENT

RULING

Date of Last Order: 28.11.2022

Date of Ruling: 30.11.2022

MWENEGOHA, J

The applicants are seeking for an order of extension of time so that they can lodge an application for revision out of time, against the ex-parte decision, delivered by Hon. L.R Rugalabamu, vide Misc. Application No.401 of 2016, dated 27th January, 2022. The application was brought under section 14(1) of the Law of Limitations Act, Cap 83, R.E 2019 and section 95 of the Civil Procedure Code, Cap 33 R.E 2019. It accompanied by the joint affidavit Mengi Obedi Mwakisole and Alphius Cyprian Kaijage, the applicants here in above. The same was heard by way of written submissions.

Advocate Finias Kinigwa appeared for the applicants. After praying the applicants' affidavit to be adopted and form part of these submissions, he

insisted that, the reason prompted the applicants to prefer this case is the existence of illegalities in the impugned decision of Honourable Rugalabamu, learned Chairperson of the Kinondoni District, Land and Housing Tribunal. That, the applicants were not given the opportunity to defend their case, hence their right to be heard was violated. The applicants' counsel referred this court to the case of **VIP Engineering and Marketing Ltd and 2 others versus CITI Bank (T) Ltd, Civil Reference No. 6,7 and 8 of 2006, Court of Appeal of Tanzania.**

The respondent appeared in person. His responses to the submissions by the applicants were that, the claims by the applicants that they were not aware of the existence of the impugned judgment are unfounded. They were duly served with the summons to appear and the 2nd respondent attended several sessions when the said matter was called up before the tribunal. He later disappeared leading to the decision by the tribunal to proceed ex-parte against them. Further, the applicants have failed to account for their delay of about 270 days. Therefore, their application should not be considered as stated in **Dar Es Salaam City Council versus Group Security Co. Ltd, Civil Application No. 234 of 2015, Court of Appeal of Tanzania (unreported).**

I have considered the submissions of parties through their respective counsels. Also gone through the joint affidavit and counter affidavit against the application. The issue for determination is whether the application has merits or not.

Upon careful examination of the affidavit in support of the application I have discovered that, the case to which the applicants intend to apply for revision against it (Land Application No. 401 of 2016), was heard and

decided ex-parte against them. This is why they claim that they were not heard in the said matter before the District Land and Housing Tribunal for Kinondoni, hence the illegality so complained as a reason for allowing this application.

The law however, allows courts or tribunals to hear any matter ex-parte upon non appearance of the defendant or respondent as the case may be. Therefore, to proceed ex-parte is not illegal so long as the procedures for the same were followed. The party aggrieved by the ex-parte decision or orders has a remedy provided in law. The remedy we all know that, in any case which the decree was passed ex-parte against the defendants, as in the case at hand, they have to apply to the court by which the decree was passed for an order to set it aside, **see Caritas Tanzania and Another versus Steward Mkwawa (1996) TLR 293**. And if they are barred by time, their application must fail in absence of a leave to apply for setting aside the ex-parte judgment and decree out of time.

Therefore, I agree with the respondent that, the applicants have failed to give sufficient reasons for his application to be allowed. The point of illegality is not there, hence this application is devoid of merits.

In the end, the application is dismissed for the reasons I have wondered to give here in above. No order as to costs.




T.N. Mwenegoha.

Judge

30/11/2022