

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.183 OF 2023**

**TABITHA MGANGA ..... APPLICANT**

**VERSUS**

**ELIZABERTH MASHAFI .....1<sup>ST</sup> RESPONDENT**


**RULING**

*Date of last order: 25/7/2023*

*Date of Ruling: 31/7/2023*

**A.MSAFIRI, J.**

By chamber summons taken under Section 14(1) of the Law of Limitation Act [Cap. 89 R.E 2019]; and Section 93 of the Civil Procedure Code [Cap 33 R.E 2019] the applicant instituted this application against respondent, seeking for the following orders: -

1. That this honorable court be pleased to grant leave upon which the applicant may file an application for **revision** out of time against the judgement and orders of the District Land and Housing Tribunal of Ilala in Land Application No. 318 of 2017 delivered on September 19, 2022 by Hon. Mgulambwa – Chairperson. 

2. Any other relief(s) this Honourable Court may deem fit to grant.

The chamber application has been taken at the instance of applicant and is supported by the affidavit sworn by one TABITHA MGANGA, the applicant. The respondent opposed the application by filing counter affidavit sworn by herself.

The background of the dispute is briefly that, the now applicant was also the applicant at the District Tribunal in the said Land Application No 318 of 2017. After hearing, the application was dismissed with costs. The applicant was dissatisfied with the decision of the District Tribunal, hence she intended to appeal to this Court, which as per the contents of her affidavit, she lodged memorandum of appeal on 16<sup>th</sup> December 2022 but it was not filed and she was told by the Court registry to come back during January 2023. Hence, since she was out of time by January 2023, she filed the current application for extension of time to lodge her revision.

The hearing of the application proceeded *viva voce*, whereby both the applicant and the respondent were unrepresented.

Submitting in support of the application, the applicant prayed to adopt the contents of her affidavit. She added that, she came to this Court on 16/12/2023 to file an application, but she was told at the

*Alls.*

registry that she has to leave her documents there for filing in Court and it was on Friday. She stated that she was told to come back on Monday.

She argued that, she decided to see the District Registrar to tell her about the situation. The Registrar told her to take her documents to the IT people who received her documents for filing.

She argued further that, she came back several times to check whether her case was filed and after one week she came at the registry and she was given back her documents with filed Case No.320 of 2023, and she was told to come back next week.

She stated that, she came back next week and she was told that the Court was on vacation, there was nobody to sign the summons. She came back at the end of January and she was told that her case was not registered. She was advised to file a new application out of time. She complied and filed a new application seeking leave to file her case out of time. She prayed for the application to be granted so that she can exercise her right to be heard.

In her reply, the respondent prayed to adopt the contents of her counter affidavit as part of her submissions and stated that the main case was determined since 19/9/2022 and the applicant did not bother to file any appeal or revision.

*ALL*

She stated that, the applicant had a right to exercise her right to be heard on time but she failed to do so. She averred that, the applicant did not give sufficient reasons.

In her rejoinder submissions, the applicant reiterated her submissions in chief and added that she got a copy of the original case on 02/11/2022 when the judgement was signed. She stated that, initially she filed the application on time.

Having considered the oral submissions made by both parties, and the contents of the affidavit and counter affidavit, the issue that has to be determined is whether the application has merits.

The Court has discretionary power to grant an extension of time if there are sufficient reasons and good cause to warrant it to exercise that discretion. However, that discretion is judicial, and so it must be exercised judiciously. In the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha, the following guidelines were formulated in granting extension of time: -

- (a) The applicant must account for all period of delay. *Alle*

- (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 the existence of a point of sufficient importance; such as the illegality of the decision sought to be challenged.

The applicant has tried to establish the reasons that caused her to delay to file the documents on time. She stated that she came to Court on 16/12/2022 to file her documents but she was told at the Registry to leave them and come back on Monday because it was Friday. She stated that she consulted the IT people for filing her documents. She averred that she was told to come back to Court on several times until when she was told that her case was not registered.

Since the applicant obtained information from other people whose names were not provided in court and those information are the reasons for the delay, the applicant was to produce the affidavits of those people who gave her all the information. Their proof could have been useful to substantiate the applicant's assertions of their involvement in this matter. Otherwise, the applicant's averments remain to be a bare claim

*Alle.*



with no proof and they appear to be more of excuses than the facts.

In the case of **Dianarose Spareparts vs Commissioner General Tanzania Revenue Authority**, Civil Application No. 245/20 of 2021 CAT at page 9, it was held thus: -

*" The stance of law is that, where an affidavit mentions another person on a material point, the other person should also take an affidavit"*

From the above cited authority, I am of the firm view that the affidavits of the people named by the applicant was very vital for the proof of the applicant's assertion.

As to the requirement of accounting for each day of delay, the case of **Bushiri Hassan vs Latifa Lukio Mashayo, Civil Application No.3 of 2007, CAT (Unreported)** has stressed 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 must be taken.

The records shows that, the trial Tribunal delivered its decision on 19/09/2022 and this application was filed on 29/3/2023. However, the applicant has submitted that she received a copy of impugned decision on 02/11/2022 when the same was signed by the Tribunal Chairman. I

*Alle*

have read the attached copy of judgment and it shows that indeed, the copy of judgment was signed by the Hon. Chairman on 02/11/2022. However, this application was filed in Court on 03<sup>rd</sup> April 2023, making a total of more than four months delay. The applicant has not accounted for the period of delay from January 2023 when she purportedly was told to file her documents up to April 2023 when she filed this application.

Paragraph 13 of the applicant's affidavit states that the decision of trial Tribunal is tainted with irregularities, which can be corrected by this Court as the respondent has trespassed over the matrimonial land. That being the claim of illegality, in my view it constitutes the sufficient reason for extension of time.


In the case of **TanESCO vs Mufungo Leonard Majura and 15 Others, Civil Application No. 94 of 2016, CAT** (Unreported), it was stated that: -

*"Notwithstanding the fact that, the applicant in the instant application has failed to account for the delay in lodging the application, the fact that, there is a complaint of illegality in the decision to be impugned, suffices to move the Court to grant extension of time, so that the alleged illegality can be addressed by the Court"*

*ALLS*

Consequently, I hereby find that the applicant has met the requirements to warrant this Court to exercise its discretion to grant an extension of time. In the foregoing, I proceed to grant the applicant's application to lodge the application for revision as prayed, for reason of the claimed illegality. The application should be filed within 14 days from the date of this Ruling. Each part to bear her own costs.

It is so ordered.

  
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**A. MSAFIRI**  
**JUDGE**  
**31/7/2023**

