IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 27446 OF 2023

KESSYNURU MOHAMED LITAM..... APPLICANT

VERSUS

SAID UREMBO MAWAMBA..... RESPONDENT

RULING

Date of Last order 29/02/2024

Date of the Ruling 19/3/2024

A. MSAFIRI, J.

The matter at hand has been brought under Section 14 of the Law of Limitation Act, R.E 2019 and Section 41(2) of the Land Disputes Courts Act, R.E 2019.The applicant herein is seeking for the following orders: -

1. *That this Honourable Court may be pleased to grant extension of time within which to file Revision on the judgement of the District Land and Housing Tribunal for Temeke on the Land Application No. 101 of 2012 which affect the ownership of the applicant on Plot No.33 Block B Maneno Street, Temeke, Dar es Salaam.*
2. *The costs of this Application.*
3. *Any other temporary relief as the Hon. Court shall deem fit and just to grant.*

The application was supported by an affidavit of the applicant. The respondent also filed a counter affidavit which was affirmed by himself. The hearing was oral whereby the applicant was represented by Mr. Yudathadei Paul, learned advocate while the respondent was legally serviced by Mr. Marwa Kitigwa, learned advocate.

In support of the application, Mr Paul started his submissions by praying to adopt the contents of the affidavit by the applicant. He pointed two reasons for the applicant's delay to file an appeal out of time. The first one was sickness of the applicant where he submitted that when the impugned judgment was delivered on 09th September 2015, the applicant was sick since July 2015 when she suffered stroke. That at all that time she has been suffering from the stroke and she was bed ridden and unable even to move outside for daily activities.

He said further that the applicant was even suffering from loss of memory because of stroke. That, in support of the claim of sickness, the applicant has attached two medical reports, first one by Agakhan Hospital and later she attended Muhimbili Hospital which report is also attached. He prayed for the two Reports to form part of his submissions.

Mr Paul submitted further on the second reason that there was illegality apparent on the impugned judgment. He said that the illegality

is that, first the Chairman dismissed Application No.101 of 2012 and then proceed to order that the respondent is the lawful owner of Plot No. 33 Block B, Maneno Street, Temeke, while there was no counterclaim which gives the respondent the right to be declared the owner. That, the Chairman was wrong then to proceed to issue further orders after dismissing the Application. To bolster his point, he cited the case of **Omari Ali Nyamalege and 2 others vs. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017, CAT at page 11 where it was held that illegality of the decision being challenged is sufficient ground for extension of time.

For those reasons, the counsel for the applicant prayed for the Court to grant the sought extension of time.

In reply, Mr Kitigwa vehemently denied the applicant's claims and submitted that after the judgment in the main case was delivered at the trial Tribunal where the applicant was acting in personal representation of one Mashaka Saidi Man'gwaru who was the applicant, the applicant had proceeded to file five cases in court within the time she claimed she was sick. Two cases at High Court and three at the District Tribunal at Temeke. He said that in that regard, the reason for sickness should be disregarded because the applicant was able to file various cases after the one she intends to challenge.

On the reason of illegality, Mr Kitigwa submitted that the impugned judgment was correct that is why the applicant filed an appeal in High Court.

On the claims that the applicant was not party, he argued that the applicant has not established her interest on the former case and the subject matter and she has not proved that she is an heir of Mashaka Mangw'aru whom she was representing in former case in the trial Tribunal. He prayed for the application to be dismissed with costs for lack of merit.

In rejoinder, Mr Paul reiterated his submissions in chief and prayers. He admitted that the applicant was representing Mashaka Mangw'aru by the power of attorney but that does not mean it was her case.

Having carefully considered the rival submissions by the parties along with content of their pleadings, the issue is whether the Application is tenable in such way that the applicant has managed to establish good cause for her prayers to be granted by the Court.

The applicant in this case prays for the extension of time to file Revision on the judgment of the trial Tribunal. The extension of time is purely the court discretion, however for the court to exercise its discretion for extension of time, good cause must be shown. It follows therefore that

the applicant is required to show good cause before the court can grant an extension of time. This is provided under Section 14(1) of the Law of Limitation Act and under proviso of Section 41(2) of the Land Disputes Courts Act.

This mandatory principle has been elaborated further in numerous authorities both by this Court and the Court of Appeal. In the case of **Benedict Mumello vs. Bank of Tanzania,** Civil Appeal No. 12 of 2002 the Court of Appeal held that:

> *"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that the extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause"*

In her affidavit and on the submissions before the court by her advocate, the applicant gave two reasons for her delay to file the intended application within the prescribed time. The first one is sickness. The applicant has stated at paragraphs 3 and 4 of her affidavit that the judgment in Application No.101 of 2012 was delivered on 09th September 2015. That at that time, she was seriously sick and has been a stroke survivor since July, 2015, to date and her condition has been changing to the extent of losing her memory and she has never fully recovered. She has attached two Medical Reports from Aga Khan Hospital and Muhimbili Orthopedic Institute (MOI)

which the applicant's advocate prayed to form part of the applicant submissions.

I have read the two Medical Reports. The first one is from Aga Khan Hospital which is dated 08th April 2021. The Report states that one Ms Kessynuru Tajiri has been the patient on regular clinic follow up at the hospital since 2015 and that she has been a stroke survivor since 2015. Unfortunately, the Report does not state specific date on which the applicant was received at the hospital as a patient. It just state that the applicant has been a patient "since 2015". When exactly the applicant did suffer stroke and start to attend in hospital? The year 2015 has twelve months. The Report is silent about the date and even month of admission of the applicant and her treatments at the hospital.

In her affidavit, the applicant has stated that she has been a stroke survivor since July, 2015 but this is not supported by the Medical Report which is silent on the dates and months. Knowing the month which the applicant suffered the stroke and was treated at the alleged hospital was/is very important since according to the attached copy of judgment of the trial Tribunal in Application No. 101 of 2012, which the applicant is challenging, it shows that the applicant herself was Alle-

present in court on the date of delivery of the said impugned judgment.

The judgment shows that it was delivered on 09th September 2015 in presence of the parties and their advocates. On the applicant's side (applicant was one Mashaka Said Mangw'aru), he was represented by Kessynuru. Also present was his advocate one Thadei. On the respondent's side he was also present with his advocate one Chamriho. The whole judgment shows that the applicant one Kessynuru was all along representing the applicant by the power of attorney and she even gave her evidence in court as PW1.

Also on the date of judgment, she was present in court, representing the applicant. The one million question is when did the applicant suffered from the stroke? If she suffered stroke in July 2015 and she was immobile as she claims, then how could she appear in court in September 2015 on the date of judgment? The answer is known to the applicant herself as she chose not to reveal it to the court.

In the Medical Report from MOI, I also find it to be inconclusive. The Report shows that the patient Kesinuru Mohamed Litami was admitted in hospital in 19th September 2021. That she underwent Alle.

surgery then was admitted in Intensive Care Unit, later admitted in normal ward and finally discharged in 23rd September. Unfortunately, whether on purpose or accidentally, the year of discharge was not revealed. This Report does not assist the applicant either for the reason of omitting the year when she was purportedly discharged.

It follows then that the applicant has failed to account for the days of the delay from the date when the judgment was delivered. This is for the reason that the Medical Reports she has produced does not reveal the dates when she suffered from the stroke and began to attend the hospital for treatment in 2015.

The applicant has an obligation to account for each day of delay as it was laid down in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo** Civil Appeal No. 3 of 2007(unreported) where the Court of Appeal had this to say:

> *"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 has to be taken."*

This position was reiterated by the Court of Appeal in the recent case of **Henry Jalison Mwamlima vs Robert Jalison Mwamlima and Christian Jalison Mwamlima(as administrators of the estate of the late Jalison Mwamlima) and 2 others,** Civil Application No. 652/06 of 2022.

I find that the applicant have failed to establish the good cause for delay as she failed to account for the days of delay.

On the second ground of illegality, the applicant has stated at paragraph 7 of the affidavit that she was informed by her advocate that the judgment has illegality to the extent that the trial Chairman declared the respondent owner of the plot in dispute while there was no counter claim. The advocate for the applicant has also submitted on that reason of illegality.

It trite law that illegality if it is apparent on the face of record should be regarded by the court and for that reason alone the court can grant the sought extension of time. See the case of **the Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] T.L.R 185) where the Court of Appeal held that;

> *"In our view, when the point at issue is one of alleging illegality of the decision being challenged, the court has a duty even if it means extending time for the purpose to ascertain the point and if the alleged illegality is established, to take appropriate measures to put the matter and record straight."*

However, for this principle to apply, such point of law/illegality must be of sufficient importance and must also be apparent on the face of

record, not one that would be discovered by a long-drawn argument or process. In the case of **Lyamuya Construction Company Limited vs. Board of Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010 (unreported), it was observed that;

> *"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one.* ***The Court there emphasized that such point of law must be that of the sufficient importance and, I would add that it must be apparent on the face of the record such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.*** *(Emphasis is mine).*

This position was reiterated with approval by the Court of Appeal in the case of **Ngao Godwin Losero vs. Julius Mwarabu** Civil Application No. 10 of 2015 CAT Arusha (unreported), where it was held that that the illegality of the impugned decision has to be clearly visible on the face of the record.

In the impugned judgment, the illegality pointed by the applicant is that the trial Tribunal declared the respondent the owner of the plot in Ada.

dispute instead of dismissing the Application. However, I find that there is no illegality apparent on the face of impugned judgment as the trial Chairman was determining the first issue which was framed before the hearing which was "*who is the lawful owner of the disputed property?*" Since the ownership of the suit plot was in dispute between the applicant and the respondent, the issue was to be determined on who is between the disputing parties is the owner of the suit plot. This is what the trial Chairman did and found the respondent the owner.

In the circumstances, I find that the claimed illegality is not apparent on face of the record as it need arguments to ascertain it.

In upshot and for the foregoing reasons, I find that the applicant have failed to establish good cause for the delay to file the intended application within time and I hereby dismiss this application, with costs.

It is so ordered.

The right of appeal explained.

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A.MSAFIRI

JUDGE

19/3/2024