

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 473/17 OF 2022

RESTITUTA FRANK MSONGOLE APPLICANT

VERSUS

MAIKO NGAYA SHOO1ST RESPONDENT

MUSA MWIMBE 2ND RESPONDENT

**(Application for extension of time to file an application for revision of the
judgment and decree of the High Court, at Dar es Salaam)**

(Kente, J.)

dated the 30th day of June, 2017

in

Land Appeal No. 165 of 2015

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RULING

13th & 23rd November, 2023

ISSA, J.A.:

This is an application made by way of notice of motion under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) seeking extension of time to file an application for revision of the judgment and decree of the High Court at Dar es Salaam (Kente, J. as she then was) dated 30.6.2016 in Land Appeal No. 165 of 2015. The application is supported by an affidavit sworn by Restituta Frank Msongole, the applicant.

The following brief background facts will serve the purpose of appreciating the essence of the present application. The applicant filed an Application No. 35 of 2012 at the District Land Housing Tribunal (DLHT)

for Coast Region at Kibaha. She claimed that she is the lawful owner of the disputed land which she purchased from Rukia Mshamu in 1998. Her case before the Tribunal was that in 2009 the respondents trespassed on the said land. The 2nd respondent, on the other hand, claimed that the land belonged to his father who was married to Rukia Mshamu. It was part of his inheritance and he sold it to the 1st Respondent. The Tribunal on 11.11.2015 decided in favour of the applicant.

The 1st respondent was aggrieved by that decision and he filed an appeal to the High Court, Land Appeal No. 165 of 2015 against the applicant. The High Court decided in favour of the 1st respondent as the applicant failed to prove her case on balance of probability.

The applicant discontented intended to appeal to this Court, but she did not lodge a notice of appeal on time. Hence, she applied to the High Court (Mango, J.) for extension of time to lodge notice of appeal in Misc. Land Application No. 704 of 2019. The applicant was granted 14 days to lodge the notice of appeal and to apply for leave to appeal. The decision was delivered on 18.9.2020. The applicant failed to lodge the notice of appeal, but she applied for leave to appeal at the High Court, (Msafiri, J.) in Misc. Land Application No. 555 of 2020 which was granted on 12.8.2021. The applicant realising that, she has not lodged the notice of appeal she filed at the High Court (Makani, J) a Misc. Land Application No. 476 of

2021 seeking extension of time to file the notice of appeal out of time. The High Court dismissed the application on 4.4.2022 as it found it without merit. Undaunted, the applicant lodged a notice of appeal against the refusal of extension of time on 22.4.2022. Again, realising that it is a futile exercise she withdrew the notice of appeal on 3.8.2022. She then filed this application on 15.8.2022 for extension of time within which to file an application for revision of the High Court decision in Land Appeal No. 165 of 2015. The application is predicated on one ground that the judgment against which the revision is sought has an apparent error on the face of the record.

At the hearing of the application the applicant was fending for herself whereas the respondents had the service of Mr. Japhet Mmuru, learned advocate.

Ms. Restituta adopted her affidavit together with everything in the documents she has filed. She added that she is disputing paragraph 8 of the affidavit in reply which suggested that she had lied in court. She submitted that, she has not lied or mislead the court. She is a layperson and she is representing herself in the case. She is only getting assistance for a lawyer in drafting the documents. Her prayers are as found in her notice of motion.

Mr. Mmuru, learned advocate for respondent also adopted the affidavit in reply. He added that this application for extension of time within which to file an application for revision is predicated on the ground that there is apparent error on the face of the record. Unfortunately, the error was nowhere to be seen. He stated further that, the relief sought by the applicant is not allowed by law. The person aggrieved by the Land Tribunal has only one remedy which is appeal as provided by section 47(c) of the Land Dispute Act, 2016, but the applicant realising that she has failed to appeal she has now applied for revision. Mr. Mmuru submitted that revision is not an alternative to appeal. The powers of doing revision are exercised by the Court sparingly. In this case if she is granted extension of time, it is an exercise in futility as she has no right for revision. He bolstered his argument in the case of **Sogoka Raphael v. Florentina Raphael**, Civil Application No. 556/08 of 2023 (unreported) where the Court refused to extend the time as what was intended to be done was not allowed by law.

Furthermore, Mr. Mmuru added that the application did not satisfy the requirement for extension of time as laid down in **Lyamuya Construction Ltd**, Civil Application No. 2 of 2010 (unreported). In this case four conditions were laid down in which the applicant is required to satisfy before extension of time is granted, but the applicant did not satisfy

any of them. The order of the High Court was delivered on 30.6.2017 and the applicant had 60 days to file her appeal. The time lapsed on 31.8.2017. Even after she was granted extension of time by the High Court she failed to lodge a notice of appeal.

In the rejoinder, the applicant submitted that the time has passed because she was preparing for another case, and she was misdirected by an advocate. That is why the High Court granted her extension of time. She added that she is not negligent, she is fighting for her rights.

I shall now proceed to determine the matter on the basis of the arguments and legal principles raised. I have to restate two principles to pave way for my deliberations. One, the application was brought under Rule 10 of the Rules, but the jurisdiction under Rule 10 has to be exercised according to the rule of reason and justice and not according to private opinion or arbitrarily. See **Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women's Christians Association of Tanzania**, (supra). Two, there is no universal definition of what amounts to good cause. The Court is bound to consider the prevailing circumstances of the particular case and should also be guided by a number of factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent and whether there is a point

of law of sufficient importance such as illegality of the decision sought to be challenged. This position of law has been restated by the Court in a number of cases including; **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] T.L.R. 387 and **Lyamuya Construction Co. Ltd** (supra).

In this application there are two issues to be determined. One, is whether a party to a proceeding has a liberty to choose between appeal and revision. Two is whether the length of the delay has been accounted for.

Starting with the issue of revision, it is a trite law that revisional jurisdiction of the Court is exercisable in matters which are not appealable to the Court with or without leave or where the appellate process has been blocked by a judicial process. See: **Halais Pro-Chemie V. Wella AG** [1996] T.L.R. 269, **Moses Mwakibete V. Editor- Uhuru & Two Others** [1995] T.L.R. 134, and **Transport Equipment Ltd. V. D.P. Valambhia** [1995] T.L.R. 161.

In this case after the High Court decided the Land Appeal No. 165 of 2015 in favour of the respondent on 30.6.2016. The applicant had a right to appeal against that decision. Unfortunately for her she did not lodge a notice of appeal in time. Hence, she applied for extension of time to lodge the notice of appeal and apply for leave. The High Court did grant the

applicant extension of time to do both, but the applicant failed again to lodge the notice of appeal. Her second attempt to apply for extension of time to lodge notice of appeal hit a snag, and from that moment she has been in and out of court with various applications. Lastly, she knocked this door with an application for extension of time to file for revision.

It is a trite law that revision is not an alternative to appeal. The applicant had a right to appeal, but she allowed that right to slip from her fingers, now she cannot come to this Court asking for extension of time within which to apply for revision. The Court in **Robert Kadaso v. Republic**, Criminal Appeal No. 476 of 2023, and **Sogoka Raphael v. Florentina Raphael**, Civil Application No. 336/08 of 2023 (both unreported) refused similar applications for extension of time. In **Robert Kadaso** (supra), the Court amplified the point as follows:

"It is quite perturbing that High Court granted an extension of time to lodge an appeal that is expressly barred by statute. In our respectful view, the grant of extension of time was clearly and exercise in futility as the appellant had no right of appeal against the interlocutory decision in issue."

Eventually, this issue is sufficient to dispose of this application and for that reason I will not belabour with the issue of delay. Therefore, I found no sufficient cause to extend the time to the applicant, to file an

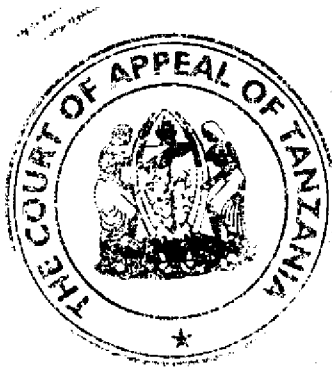
application for revision, as such grant would be a futile exercise. I accordingly dismiss this application with costs.


It is so ordered.

DATED at DAR ES SALAAM this 22nd day of November, 2023.

A. A. ISSA
JUSTICE OF APPEAL

The Ruling delivered this 23rd day of November, 2023 in the presence of the Applicant in person and in the presence of Mr. Patrick Michael Masenge, holding brief for Mr. Japhet Mmuru, learned counsel for the Respondents is hereby certified as a true copy of the original.




S.P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL