UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA REGISTRY

AT IRINGA

MISC. APPLICATION NO. 04 OF 2023

(Arising from Application No. 104 of 2018 in the District Land and Housing Tribunal for Iringa District at Iringa)

MSAFIRI ABDALLAH MWALONGO (ADMINISTRATOR OF ESTATE OF THE LATE **RAMADHANI MWALONGO).....APPLICANT**

VERSUS

ANNASTASIUS MBOGORO.....1ST RESPONDENT

FATUMA ABDALLAH MWALONGO (ADMINISTRATOR OF THE ESTATES OF THE LATE ABDALLAH MWALONGO).....**2ND RESPONDENT**

MWAJUMA ZUBERI MWALONGO (ADMINISTRATOR OF THE ESTATES OF THE LATE ZUBERI MWALONGO).....**3RD RESPONDENT**

RULING

Date of the Last Order: **12.09.2023.**

Date of the Ruling: **22.09.2023.**

A.E. Mwipopo, J.

Msafiri Abdallah Mwalongo, the applicant, filed the present application for extension of time to file application for revision against the decision of the District Land and Housing Tribunal for Iringa at Iringa (DLHT) in

Application No. 104 of 2018 which was delivered on 28th July, 2019. The applicant, who is the administrator of the states of the late Ramadhani Mwalongo, stated that he was not a party in the impugned application before the trial District Land and Housing Tribunal. In the impugned decision, the 1st Respondent namely Anastasius Mbogolo sued the 2nd Respondent namely Abdallah Mwalongo and the 3rd respondent namely Zuberi Mwalongo for the claim of the suit premise. The appellant claimed to have bought the suit land on 13th March, 2002, from Abdallah Saleh, who was the administrator of the estates of the late Ramadhani Mwalongo. The said Ramadhani Mwalongo is the father of Abdallah Mwalongo and Zuberi Mwalongo. The said suit land at the time when the application was instituted in the Tribunal it was owned by the late Ramadhani Mwalongo and to date is still registered in the name of the late Ramadhani Mwalongo. The trial DLHT proceeded to hear the matter and determine it in ex parte following the failure to give the owner the right to be heard. The applicant states that on 20th October, 2020, he was informed to vacate from the suit premises. After he was supplied with the judgment of the trial DLHT, he instituted Misc. Application No. 130 of 2021 in the DLHT to set aside impugned judgment. The application to set aside the impugned judgment was dismissed for being overtaken by the event.

The applicant was aggrieved with the decision of the DLHT to dismiss the application to set aside the ex parte judgment and filed the present application for revision. The grounds for extension of time found in the affidavit in support of the application is that he was in court corridors pursuing his rights to the suit premises after he became aware of the decision of the trial DLHT and the presence of several illegalities in the record of the trial DLHT.

The 1st respondent filed counter affidavit in opposition to the application. The said counter affidavit was sworn by Ms. Joyce Francis, advocate for the 1st respondent. The 2nd and 3rd respondent did not file their counter affidavit as they are supporting the application.

The applicant in this case was represented by advocate Shaba Mtung'e, the 1st respondent was represented by Ms. Eneles Kita and Ms. Joyce Francis, advocates, the 2nd and 3rd respondents appeared in person without representation. The hearing of the application proceeded by way of written submissions following the prayer by the counsels for the 1st respondents which was supported by the applicant, 2nd and 3rd respondents. The 2nd and 3rd respondents informed this Court that they are not going to file any submission.

The applicant said in the submission in support of the application that the land in dispute is registered in the name of Ramadhani Mwalongo to date. The said Ramadhani Mwalongo died in 17th April, 1967, and the suit premise remained under the use and control of the deceased family. The applicant was evicted by the 1st respondent in the suit premises through Majembe Auction Mart in 2020. In 2021, the applicant and his family filed Misc. Application No. 130 of 2021 to set aside the exparte judgment and the same was dismissed on 28th February, 2022, for wants of merits. The applicant on 28th February, 2022, filed Land Case No. 06 of 2022 in this Court claiming for the land but the application was struck out on 27th January, 2013, and the applicant was advised to file revision against the decision of the trial DLHT. On the same date the applicant filed this application for extension of time to file revision. The applicant states that as he was not part to the main application before the trial DLHT, the only remedy is to file revision application as he could not appeal against the decision. He has been in Court corridors to date looking for his right to file revision against the decision of the trial DLHT.

The applicant submitted further that there are illegalities in the impugned exported judgment of the trial DLHT. He said that the illegalities

includes that the owner and the vendor were not joined in the application before the trial DLHT, the owner was not availed right to be heard, the respondent in impugned decision had no locus standi, the description of the property in the application differ with the property in issue, the details of the property in the sale agreement and the suit premises differ, the application was time barred, respondents were not informed of the date of judgment and trial DLHT had no pecuniary jurisdiction to entertain the matter. In support of the position, the applicant cited the case of **James Anthon Ifada vs. Hamis Alawi,** Civil Application No. 482/ 14 of 2019, Court of Appeal of Tanzania at Shinyanga, (unreported), where it was held at page 11 and 12 of the judgment that where the point at issue is illegality of the decision challenged, the court has duty even if it means extending time for purpose of ascertain the point and if the alleged illegality be established to take appropriate measures to put the matter and the record right.

In reply submission, the 1st respondent said that after the demise of Ramadhani Mwalongo in 1967, Abdallah Salehe Lukali was appointed as an administrator of the deceased estates through Probate and Administration Cause No. 47 of 2000. In 2002, Abdallah Salehe Lukali transferred the suit premises to the 1st defendant following the Court order. The applicant knows

that the late Ramadhani Mwalongo's probate was concluded and closed after the inventory was filed in Court, but he decided to open another probate and administration case for the administration of the estates of the delayed Ramadhani Mwalongo. The application for extension of time to file revision against the decision of the trial DLHT in Application No. 104 of 2018 is late for 7 years. The applicant was supposed to account for the delay from 28th June, 2016, when the judgment was delivered till he filed the present application for extension of time in 2023. To support the position the 1st respondent cited the case of **Mathew T. Kitambala vs. Rabson Grayson and Another**, Criminal Appeal No. 330 of 2018, Court of Appeal of Tanzania at Mbeya, (unreported).

The 1st respondent responded further that the applicant has admitted to know the presence of Application No. 104 of 2018 in the trial DLHT because he was not joined as the part to the case. The 1st respondent did not join the 1st respondent because he was not necessary part or the owner of the suit premises. The respondents in the impugned application before the trial DLHT were the father of the 2nd respondent and the father of the 3rd respondent who were the children of the late Ramadhani Mwalongo, the owner of the suit premises. The father of the 2nd and the father of the 3rd

respondent ignored the summons served to them and the trial DLHT proceeded with the hearing of the application in ex parte. The applicant's reason that he has been pursuing his rights in the Court corridor is not sufficient ground. The litigation should come to an end. Being in Court corridors for years on parties negligence is not sufficient ground for extension of time as it was held in **Upendo Massawe Urio vs. The Small Things**, Labour Revision No. 22 of 2020, High Court Labour Division at Arusha, (unreported).

The 1st respondent said on the issue of illegalities that the said illegality has to be apparent of the face of record. To support the position, he cited the case **Said Sobo and 66 Others vs. Al Naeem Enterprises Ltd**, Misc. Application No. 08 of 2023, High Court Labour Division at Dar Es Salaam, (unreported). On the first illegality, the 1st respondent said that the administrator of the estates of the late Ramadhani Mwalongo could not be joined as the administrator completed administration of deceased estates. The same does not qualifies to be illegality. On the right of owners to be heard, he said that at the time the 1st respondent instituted the application the owner of the land was dead and the administrator of the deceased

estates was dead too. Thus, it could not be said that the owners were not heard.

The 1st respondent said on the 3rd illegality that 2nd and 3rd respondents were sued as trespassers to the suit land and not as owners of the properties. The said issue requires long drawn argument to see the illegality. Regarding the issue of description of the suit land, he said that the difference was minor and did not affect the execution of the suit land. However, in the contract for sale the description of the property and suit land is the same. On the issue that the impugned application was time barred for 16 years, the 1st respondent said that there were several suits between heirs themselves over the ownership of the suit land. In 2015 the Court ordered in Misc. Civil Application No. 22 of 2014 for the suit premise to be sold. Thus, the last case ended in 2015 which means the 1st respondent instituted the application three years later on. On the issue that the 2nd and 3rd respondents were not served with summons to appear on the date of judgment, he said that there is proof that they were served with summons. On the last issue on the pecuniary jurisdiction of the trial DLHT to determine the application, the 1st respondent said that there is no proof that the value of the property is 400,000/= shillings as alleged by the applicant. He concluded by stating that

the said illegalities does not qualify to be reasonable for the purpose of extending the time to file revision.

In rejoinder, the applicant retaliated his submission in chief.

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Having read the submissions by the parties, the main issue to be determined by this Court is whether the applicant has demonstrated sufficient or good cause to warrant an extension of time.

It is a settled law that this Court has the discretion to extend the time to file revision against the decision of the District Land and Housing Tribunal where the applicant has provided sufficient cause for the delay. The same is provided by section 14 (1) of the Law of Limitation Act, Cap 89 R.E. 2019. The section reads as follows:-

> *"**14**.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

From above cited provision, this Court has the discretion to grant an application for an extension of time upon a good cause shown. The Court

of Appeal in **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported), held that:

> *".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. However, this unfettered discretion of the Court has to be exercised judicially, and the overriding consideration is that there must be sufficient cause for doing so. What amounts to sufficient cause has not been defined. From decided cases, a number of factors have been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."*

In the present case, the applicant reason to file revision is that he was not part to the Application No. 104 of 2018 before the trial DLHT. As he was not the party, he could not file appeal against the decision. The remedy available to the applicant is filling the revision in this Court. Thus, I agree with the applicant that the revision is the only available remedy as he was not party to the impugned decision of the DLHT.

The applicant has a total of three grounds for extension of time. The first ground is that he was not informed about the case, it was after they were evicted in suit premise in 2020 when they learned about the impugned

judgment of DLHT. The 2nd ground is a technical delay that he was in Court prosecuting other cases between the same parties. The last ground is the presence of illegality in the record of the trial DLHT.

Regarding the issue that the applicant became aware of the impugned decision of the trial DLHT in eviction in the suit premises in 2020, the applicant said that he was not the party to the application before DLHT. It was in 2020 during eviction that they learned about the decision in Application No. 104 of 2018 in the DLHT. The 1st respondent said that the applicant was aware of the impugned decision of the DLHT hence he has to account for delay from the time the said decision was delivered.

However, looking at the facts available and the pleadings, it is obvious that the applicant was not a part to the Application No. 104 of 2018 before the trial DLHT. Under normal circumstances, it is not expected the applicant will be served with summons or know the presence of the case or decision in respect of the case. Thus, the applicant has duty to account for the delay from the time he became aware of the decision of the trial DLHT after he became aware of its decision in 2020.

In the application for an extension of time, the applicant is required to account for every day of delay. In **Bharya Engineering & Contracting**

Co. Ltd. vs. Hamoud Ahmed Nassor, Civil Application No. 342/01 of 2017, Court of Appeal of Tanzania at Tabora (unreported), it was held on page 14 of the judgment that:-

> *"As rightly submitted by the learned counsel for the respondent, in applications of this nature, each and every day of delay must be accounted for."*

A similar position was stated in **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, Court of Appeal of Tanzania (unreported), where the Court held that:-

> *"Delay, of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."*

In the present case, the applicant failed to account for each day delayed. He stated in the pleadings and submission that it was in 2020 when he became aware of the case during eviction. After he became aware of the decision, the applicant was supposed to file application for revision immediately. Unfortunately, there is nothing in record shows as to when exactly in 2020 the applicant became aware of the impugned decision. It is not possible to account from when the applicant delayed to file the application for revision. Further, the applicant stated that on 2021 he filed

Misc. Application No. 130 of 2021 to set aside the impugned trial DLHT decision. But, he did not state as to the exactly date the application was filed. This means it is not possible to account for delay from the time the applicant became aware of the impugned decision of the trial DLHT to the date of filing Misc. Application No. 130 of 2021 in the DLHT. Thus, I conclude that the applicant failed to account for the delay from the time he became aware of the impugned decision to the time he filed application for setting aside the impugned decision. The applicant only accounted for delay after filing Misc. Application No. 130 of 2021 in the DLHT.

In the second ground for extension of time, the applicant said that he was in Court corridors pursuing his right to the suit premises. The applicant is pleading technical delay in this ground. Technical delay is among good reasons for the extension of time. The position was stated in the case of **Bharya Engineering and Contracting Co. Ltd vs. Hamoud Ahmad @ Nassor,** (supra). In the case of **Fortunatus Masha vs. William Shija and another, [1997] TLR. 154**, the Court of Appeal, while explaining the technical delay, held that:-

> *"A distinction has to be drawn between cases involving real or actual delays and those such as the present one, which clearly only involved a technical delay in the sense that the original appeal was lodged in*

time but was incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances, an extension of time ought to be granted."

In **Dalia Burhan Nindi vs Zainab Ismail Msami**, Civil Application No. 235 of 2021, Court of Appeal of Tanzania at Dar Es Salaam (unreported), it was held on page 6 of the judgment that:-

"The position of the law is long settled and clear that, where a party is shown to have diligently taken steps only to be caught up in the web of technicality, a sufficient cause is generally taken to have existed for the delay."

From the above-cited cases, the technical delay principle applies when a party promptly files a matter in Court, but the Court strikes it out for incompetence. The ground is sufficient reason for extending the time to file a competent case for the orders or remedies sought in the struck-out matter, provided that the party promptly moves the Court after the striking-out order was made. But, this is not the case in this application. As I heard that the applicant failed to show if the Misc. Application No. 130 of 2021

was filed in the DLHT within time, it means the first application was not promptly filed. For the principle to be applicable, the applicant had to file the first case promptly, but the matter was struck out due to technicalities. Thus, this ground too has no merits.

On the issue of illegality, the applicant said the proceedings, judgment and orders of the trial DLHT is full of illegalities. He listed a total of eight alleged illegalities in the impugned decision of the trial DLHT. Illegality is a sufficient reason for the extension of time as it was held in **Principle Secretary Ministry of Defence and National Service vs. Devlam Valambhia [1992] TLR.185** on page 189. Illegality is not a reason constituting delay in filing an appeal. It is a legal mistake that ought to be corrected by an appellate court for purposes of putting things right and rectifying the position of the law as it was held in the case of **Stade Mwaseba vs. Edward Mwakatundu**, Misc. Land Application No. 19 of 2019, High Court, at Mbeya, (Unreported). The illegality which is a sufficient cause is the one which is apparent on the face of the record that need not be discovered by long drawn argument. See. **Efrasia Mfugale vs. Andrew J. Ndimbo and Another,** Civil Application No. 38/10 of 2017, Court of

Appeal of Tanzania, at Iringa (unreported) and cited case of **Said Sobo and 66 Others vs. Al Naeem Enterprises Ltd** (supra).

In **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010, Court of Appeal of Tanzania at Arusha (unreported), it was held on pages 9 and 10 of the judgment that:-

> *"In VALAMBHIA's case (supra), this Court held that a point of law of importance, such as the legality of the decision sought to be challenged, could constitute a sufficient reason for the extension of time. But in that case, the errors of law were clear on the face of the record. The High Court there had issued a garnishee order against the Government without hearing the applicant, which was contrary to both the Government Proceedings Rules and rules of natural justice. Since every party intending to appeal seeks to challenge a decision either on points of law or fact, it cannot, in my view, be said that in VALAMBHIA'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 an extension of time if he applies for one. The Court there emphasized that such a point of law must be that "of sufficient importance," and I would add that it must also 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."*

In the present case, the applicant has eight illegalities he claimed to be present in the record of trial DLHT. The said illegalities includes that the owner and the vendor were not joined in the application before the trial DLHT, the owner was not availed right to be heard, the respondents in impugned decision had no locus standi, the description of the property in the application differ with the property in issue, the details of the property in the sale agreement and the suit premises differ, the application was time barred, respondents were not informed of the date of judgment and trial DLHT had no pecuniary jurisdiction to entertain the matter. I'm satisfied that some of the illegalities mentioned by the applicant are apparent in the face of record. They don't requires the Court to look and examine the evidence in the record to find it. The said illegalities apparent on the face of record are the owner and the vendor were not joined in the application before the trial DLHT, the respondents in impugned decision had no locus standi hence the 1st respondent sued the wrong party, the description of the property in the application differ with the property in issue, and the application was time barred. The Court need to allow the application for revision so that the said illegality could be looked at.

Therefore, the application is allowed. The applicant is ordered to file revision application within 30 days from the date of this order. As both parties will appear before this Court in the intended revision, each party to bear own costs of the suit. It is so ordered accordingly.

A. E. MWIPOPO
JUDGE
22/09/2023