

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB REGISTRY**

**AT DODOMA**

**MISCELLANEOUS LAND APPLICATION NO. 1935 OF 2024**

*(Arising from Execution Order of Miscellaneous Land Application No. 164 of 2021 in the District Land and Housing Tribunal for Singida at Singida; Arising from the Land Case No. 30/2017 of Msange Ward Tribunal)*

**HARUNA MAUNA**

**SAMWEL MOGHU**

**WILFRED ELISANTE**

**DAFI NKINDWA**

**SALEHE ABDALLAH**

.....**APPLICANTS**

**VERSUS**

**HASSANI MALODA.....1<sup>ST</sup> RESPONDENT**

**ELISANTE MALODA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of the last Order. 19/03/2024*

*Date of Ruling. 22/04/2024*

**LONGOPA, J.:**

The applicants, **Haruna Mauna, Samwel Moghu, Wilfred Elisante, Dafi Nkindwa and Salehe Abdallah** filed an application under section 14 of the Law of Limitation Act, Cap 89 R.E. 2019 and Section 95 of the Civil Procedure Code, Cap 33 R.E. 2019 for the following Orders, namely: -



1. That this Honourable Court may be pleased to grant extension of time for filing an application for revision against the order for execution in Misc Land Application No. 164 of 2021.
2. Costs be borne by the Respondents.
3. Any other order(s) Honourable Court may deem fit.

This application was supported by a joint affidavit of the applicants dated 26<sup>th</sup> January 2024. The joint affidavit traverses number of facts relevant to the application as follows:

1. That, we are the Applicants in this Application hence we are conversant with all facts we are about to depose herein.
2. That, the 1<sup>st</sup> respondent instituted a Land Case No 30/ 2017 before Msange Ward Tribunal against the 2<sup>nd</sup> respondent which the said decision was delivered *ex parte* in favour of the 1<sup>st</sup> respondent on the 25<sup>th</sup> day of April 2018.
3. That, the 1<sup>st</sup> respondent desirous of enjoying the fruits of the *ex parte* judgment in its favour, lodged an application for execution of the *ex parte* judgment against the 2<sup>nd</sup> respondent before the District Land and Housing Tribunal for Singida at Singida vide Misc Land Application No. 164 of 2021 and on the 26<sup>th</sup> day of July 2023 the said Tribunal delivered the execution order in favour of the 1<sup>st</sup> respondent.
4. That, the said execution order was issued against the 2<sup>nd</sup> respondent where an order directing and ordering demolition of all buildings and



eviction of the said deceased together with her agents was issued and further the Tribunal appointed TAOMTRA LIMITED (Court Broker) to evict the mentioned in the event she does not comply with the orders issued. *Copy of the said order is hereby attached and marked as PEG-1 to form part of this affidavit.*

5. That, the execution order in respect of the land in dispute that was issued against the 2<sup>nd</sup> respondent, covered 18 acres, and includes the land owned by the applicants herein and which we have owned for a considerable period of time. *Copies of the sale agreements are hereby attached and collectively marked as annexure PEG -2 to form part of this affidavit.*
6. That, on the 22/01/2024, the 1<sup>st</sup> respondent herein and the appointed Court broker one TAOMTRA LIMITED invaded the applicants land and threatened to demolish the erected buildings, claiming that they are exercising Tribunal's order as they have been directed to do so and it is when the applicants discovered that there is an order against and in respect of their land.
7. That, the District Land and Housing Tribunal's order for execution and proceedings are tainted with illegalities to the effect that:
  - (i) The applicants herein were never party of the said application for execution No. 164 of 2021 nor the Ward Tribunal Case No. 30 of 2017 and therefore the applicants were never afforded the right to heard by the trial Tribunal in the matter that they had an interest.



- (ii) That the order and proceedings of the executing tribunal are illegal for it deprives the applicants of their houses and premises built on land in dispute for which they are lawful owners.
  - (iii) That, the order at issue does not properly disclose the description of the suit land as required by the law and hence deprives the applicants' rights.
8. That, it is in the interest of justice that the prayers contained in the chamber application be granted.

On the other hand, the 1<sup>st</sup> respondent states that he has not been involved in case against the applicants, but he had a case with his relative one Elisante Maloda (2<sup>nd</sup> respondent who is a deceased) whereby the respondent was declared lawful owner from the Ward Tribunal to the District Land and Housing Tribunal.

It is averred that the deceased did not challenge that decision and in course of the execution of the decree by assistance of the Tribunal via a Court broker is when the applicants emerged. It was his version that this Court be pleased to dismiss the application so that the respondent can continue enjoying fruits of Tribunal's decision on the land in question.



On 19/03/2024, both parties appeared before me in person each fending for himself. The applicants were the first to take stage. They argued that it was around 24<sup>th</sup> January 2024 when they were informed that the land they are occupying and using should be surrendered to the respondent one Hassani Maloda.

The applicants state that such information came with shock and puzzling as they have never been involved in any case that determine their ownership of land in that area. According to them, neither of them had knowledge that the respondent was declared as the owner. It was surprising as they have been in occupation and use of that land for long time some of them since 1997 todate.

It is submission by the applicants that it is the District Commissioner who called the applicants to inform them that there was a pending execution on their respective land thus applicants had to immediately apply for the extension of time to file revision to challenge the execution that is illegal and affect their rights without being afforded full hearing rights.

It was the applicants prayer that extension of time be granted to allow the interest of justice of the persons who are not party to the proceedings before as party to the new coalition.



On the other side, the respondent did not seriously consider objecting the application for the extend time for the applicants to have their rights be determined to the finality. That is the summary of available facts in support or otherwise of the application for extension of time to file an application for revision.

It is correct that this Court is empowered under Section 14 of the Law of Limitation Act, Cap 89 R.E. 2019 and Section 95 of the Civil Procedure Code, Cap 33 R.E. 2019 to extend time to file an application for revision. However, exercise of such powers is to be done judiciously by adhering to set criteria namely a sufficient or good cause being shown by the applicant.

I have perused the affidavit in support of the application and submissions by the parties, and I am of the view that this application is a fit application to grant. The applicants aver that between 22<sup>nd</sup> January 2024 to 24<sup>th</sup> January 2024 they were informed of the respondent's and his Court broker's intention to demolish their building on pretext of execution of the decree of District Land and Housing Tribunal for Singida entered against one Elisante Maloda who is currently deceased. The deceased happened to be the respondent's close relative.



**In Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011), pp 6-7, The Court of Appeal illustratively stated that:

*As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:- (a) The applicant must account for all the period of delay; (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; and (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

I have noted that immediately after the applicants knew of the existence of the execution order touching their lands took action to challenge the same by way of filing this application on 26<sup>th</sup> January 2024. The applicants have demonstrated diligence in prosecuting the action they intend to take.



The applicants' rights over the land in question are affected by the decision of the District Land and Housing Tribunal are likely to be impaired by the decree and execution order. However, they were not party to that decision thus the option available to them is challenging the same through application for revision.

The respondent does not dispute that applicants were not party to the proceedings that lead to the judgment and decree in his favour. He asserts that he sued his relative one Elisante Maloda who is a deceased and he won against him. Such decision was not challenged thus he intended to execute to enjoy the fruits of the decision. It is at this juncture that applicants came out to challenge inclusion of their respective lands in execution while they were not party to the case.

It is evident that there is conspicuous point of law of sufficient importance in this application on whether enforcement of the decree can be done on property of the party who was not party to the case as the applicants and respondents are at one that all the applicants were not parties to the proceedings that led to issuance of the execution order.

I subscribe to the decision **in Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011), at page 9 where the Court of Appeal reiterated about point of law to be considered for extension of time. It stated that:



*The Court meant to draw a general rule that every applicant who demonstrate 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 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.*

It is apparent that the applicants were not party to the land application that issued judgment and decree against the deceased and execution application land appointed the Court broker to demolish the buildings of the applicants who were not party to the proceedings.

In the case of **Laurent Simon Assenga versus Joseph Magoso and others** (Civil Application 50 of 2016) [2016] TZCA 330 (30 May 2016) (TANZLII), at pages 3-4, the Court of Appeal stated that:

*What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case. I am certain however that, a claim of illegality or otherwise of an impugned decision has, all along, constituted a good cause for extension of time*



*under Rule 10 of the Rules (See Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia (1992) TLR. 185; VIP Engineering and Marketing Limited and Two Others vs CITIBANK Tanzania Ltd – Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported). In the present case, the Applicant has averred that, a decision has been passed by the lower courts against his interests without him being heard. This is a serious allegation of illegality in the impugned decision. It needs to be investigated by this Court. Since, the applicant was not a party in the lower courts' proceedings, he could only approach this Court by way of revision. For that reason, I am satisfied that the applicant has demonstrated a good cause for extension of time. The application is accordingly granted.*

I am satisfied that the applicants have demonstrated sufficient cause for this Court to grant extension of time for the applicants to file an application for revision against the decision of the District Land and Housing Tribunal for Singida that entered judgment and decree in favour of the respondent as well as execution order.

In the upshot, I find merits on this application as the applicants have demonstrated sufficient cause to warrant grant of the application for extension of time. I hereby proceed to grant the application.



The applicants are granted a total of **forty-five (45)** days to file an application for revision from the date of this decision.

It is so ordered.

**DATED at DODOMA** this 22<sup>nd</sup> day of April 2024.



*Longopa*  
**E. E. LONGOPA**  
**JUDGE**  
**22/04/2024.**