

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO. 405 of 2020

(Originating from Land Case No. 323 of 2015 at the high court Land division)

MARIAM SEIF MATAMBOAPPLICANT

VERSUS

MANJIT GURMUKH SINGH.....1STRESPONDENT

MOHINDER GURMUKH SINGH.....2NDRESPONDENT

RULING

S.M. MAGHIMBI, J:

The applicant has moved this court, under Section 14(1) of the Law of Limitations Act Cap 89 R.E 2019 ("The Limitation Act"), Section 93 of the Civil Procedure Code Cap 33 R.E 2002 ("The CPC"), for the following order.

1. That, this Honourable court be pleased to grant extension of time for the applicant to file application for leave out of time.
2. Costs of the application.
3. Any other relief the court may deem fit and just to grant.

The Application is supported by an Affidavit sworn by the Applicant herself dated 22/07/2020. When the application came before this court, the Applicant was represented by Mr. Victor Kessy, learned Advocate while the

1st and the 2nd second Respondents were represented by Erick Simon, Advocate. The Application was disposed by way of written submissions.

I have considered the rival submissions of the opposing parties in this application. Much appreciation for the well researched submissions, my findings are elaborated. Mr. Kessy's main point of complain is that the respondents did not follow the required procedure, that instead of appealing against the decision of the Majohe Ward Tribunal vide BR/AR/MJ/MSP/IL/ 114/2015, where on the 22nd October 2015 the applicant was declared the rightful owner of the suit property; the respondents decided to file a fresh suit before the high court. That it was until the 11th December 2015 when the applicant filed an application for the execution process in the District Land and Housing Tribunal for Iiala (herein after the Tribunal) that it was brought to the attention of the Tribunal.

In reply, despite arguing that the application is an abuse of court of process following an already dismissed Misc. Land Application No. 73 of 2017 which was filed under section 14(1) of the Law of Limitation Act Cap 80 R.E 2019 for extension of time to apply to set aside an ex parte judgment in Land Case No. 323 of 2015, the applicant should have proceeded to appeal to the court of appeal of Tanzania against the decision which dismissed her application for extension of time.

He further submitted that the alleged illegality is baseless and unfounded. That the applicant alleged that the judgment of this court in Land Case No. 323 of 2015 is tainted with illegalities while the Majohe Ward Tribunal is the one tainted wit illegalities. He argued that the tribunal lacked pecuniary

jurisdiction to entertain the matter whose subject value was above 73,000,000/=and that through annexure 4 of the 1st respondent's counter affidavit the trial Tribunal was early notified about the issue of pecuniary jurisdiction. He continued to submit that due to the fact that advocates are not allowed to enter appearance to the Ward Tribunal , the respondents through the letter i.e. annexure G informed the Tribunal that the matter will be referred to the competent court which is this court. That the ward Tribunal received the letter and proceeded to entertain the matter by assuming jurisdiction which it never had.

On my part, I have considered the fact that there was a land dispute number BR/AR/MJ/MSP/IL114/2015 before Majohe Ward Tribunal where the applicant sued the respondents and the matter before the trial Tribunal proceeded ex-parte after being served, but the respondents refused to enter appearance to the trial Tribunal. When the applicant filed for the execution process before the District Land and Housing Tribunal for Ilala, the respondents informed the Tribunal on the presence of the Land Case No.323 of 2015 on the same parties and similar subject matter. And I have noted that the respondent did not dispute those facts above.

I find the necessity of intervention by this court as correctly argued by Mr. Kessy, that respondents purposely filed a fresh case instead of appealing against the decision of the trial Ward Tribunal. It means there are now two different decisions on the same land between the same parties. This is the point that constitutes sufficient reason for this court to exercise its discretion to extend time.

Several cases have provided guidance as to when point of illegality can be considered. In the case of **Principal Secretary, Ministry of Defence and National Service Vs. Divran P. Valambhia [1992] T.L.R 387** where the Court of Appeal held, that; -

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

On that reason, this application is hereby granted. Time is extended for the applicant to lodge his application for review against the decision of this case in Land Case No. 323 of 2015. The application is to be filed within thirty (30) days from the date of this Ruling. I make no orders as to costs.

Dated at Dar es Salaam this 18th day of March, 2021.


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S.M MAGHIMBI
JUDGE