

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

MISC. LAND APPLICATION NO.426 OF 2023

*(Originating from District Land and Housing Tribunal Coast Region at Kibaha
in Misc. Application No. 8 of 2015)*

HAMISI MRISHO KIDOGOLI APPLICANT

VERSUS

EMMANUEL SEVERRE 1ST RESPONDENT

WILLIAM MANAGHA GIDEME 2ND RESPONDENT

LEP AUCTIONEERS COMPANY LIMITED 3RD RESPONDENT

Date of Last Order: 09/08/2023

Date of Ruling: 21/09/2023

RULING

I. ARUFANI, J

The applicant, Hamisi Mrisho Kidogoli filed in this court the present application seeking for extension of time within which to file in the court an application for revision of the decision and proceedings of Misc. Application No. 8 of 2015 of the District Land and Housing Tribunal for Coast Region at Kibaha (henceforth; the tribunal).

The application is made under section 14 (1) of the Law of Limitation Act CAP 89 RE 2019 and is supported by the affidavit of the applicant herein. On the other side the respondents filed in the court their joint counter affidavit to oppose the application. The court ordered the application be argued by way of written submissions and I commend the counsel for the parties for complying with the order of the court.

The submission on behalf of the applicant was filed in the court by Mr. Wallace Boniface Mfuko, learned advocate. In his submissions he gave a brief background of the matter which has its origin at the Tribunal in Application No. 16 of 2008 whereby the 2nd respondent was declared the lawful owner of a parcel of land measuring 30 acres located at Mapinga – Bagamoyo (henceforth; the **suit land**).

Being aggrieved by the decision of the Tribunal, the applicant filed in this court an appeal which was registered as Land Appeal No. 77 of 2011. The appeal was allowed and the 2nd respondent was ordered to pay the applicant the unpaid balance of TZS 220,000/= with interest from 1st May, 1995 to enable the title of the land in dispute to pass to the 2nd respondent.

Sometime in 2015 the 2nd respondent filed an Execution Application No. 8 of 2015 in execution of the judgment of the Tribunal which was appealed against by the applicant. The applicant stated he was not a party to the stated execution application. The applicant stated to have sought administrative interventions which were fruitless until January, 2023 when he filed Application No. 7 of 2023 in the tribunal seeking for extension of time to file in the tribunal an application for investigation of his claims and objection proceedings. The stated application was struck out by the tribunal and the applicant was advised to seek revision from the High

Court. The applicant has come to the court to first seek for extension of time to file the said revision in the court out of time.

The counsel for the applicant submits that the reason for being granted extension of time they are seeking for is the illegality of the Application for Execution No. 8 of 2015 and that of the Application No. 16 of 2008. He said there were illegalities that were pointed out by the High Court on appeal that the matter was not proved on balance of probabilities. He stated it was further observed that there was an error of the 2nd respondent to represent the 1st respondent in the matter in his own capacity. He stated the 2nd respondent had no locus standi to file the application No. 16 of 2008 and the Execution Application No. 8 of 2015 in the tribunal hence the stated matters are tainted with substantive and procedural irregularities.

He argued section 14 (1) of the Law of Limitation Act states the court may for reasonable or sufficient cause extend the period of limitation. He cited in submission the cases of **Kalunga & Company Advocates V. National Bank of Commerce** [2006] TLR 235, **Oswald Masatu Mwizarubi V. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, **Principal Secretary Ministry of Defence & National Service V. Devram P, Valambia**, [1992] TLR 387 and **Arunae Chaggan Mistry V. Naushad Mohamed Hussen & 3 Others**, Civil

Application No. 6 of 2016 and said the courts held that, the ground of illegality constitutes a good cause for granting extension of time.

The counsel for the applicant submitted further that, the other reason why the application was delayed for 8 years is due to the fact that the applicant was declared by the High Court in Land Appeal No. 77 of 2011 he is the rightful owner of the suit land. He said it was in December, 2022 and January, 2023 when the respondents came to the suit land to negotiate payment with more than one hundred residents residing at the suit land and attached the eviction and demolition notice on Serikali ya Mtaa whereas the applicant knew that the respondent was executing the decree of the Tribunal in Land Application No. 16 of 2008.

He said the respondents would not be prejudiced for the extension of time to be granted and for the matter to be heard on merit so as to enable all ambiguities surrounding the dispute between the parties can be resolved. He said the wheels of justice should not be restrained by any means as per the case of **D.T. Dobie (Tanzania) Limited vs. Phantom Modern Transport (1985) Limited, Civil Application No. 141 of 2001 (CAT)**(unreported). At the end he prayed the application be granted.

Mr. Erick Erasmus Bitarohize, Advocate drew and filed in the court submissions on behalf of the respondents. He adopted the counter affidavit filed in the court by the respondent and observed on the outset that, the applicant does not have any interest in the suit land. He argued the applicant's interest on the suit land was extinguished way back in 2013 when he applied for execution of the order of the High Court in Land Appeal No. 77 of 2011 vide Misc. Land Application No. 43 of 2013.

He said the court found that there was a balance amount of TZS 220,000/= which had not been paid to the applicant by the 2nd respondent and the court ordered the 2nd respondent to pay the applicant the stated balance and interest totalling to TZS 2,500,000/=. He said this amount was duly paid by the 2nd respondent to the applicant in settlement of the matter. He said in Land Appeal No. 77 of 2011 the High Court did not declare the applicant lawful owner of the suit land but ordered the 2nd respondent to pay the balance amount of the purchase price so that he could take possession of the suit land which amount the 2nd respondent paid with interest.

The counsel for the respondent argued in relation to the application for extension of time that, it is a settled principle that grant of extension of time is on the discretion of the court and the stated discretion must be exercised according to the rules of reason and justice. He cited in his

submission the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT at DSM (unreported) which gave guidelines to be considered in determining applications of this nature. It was stated the applicant must account for all the period of delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take, and; if the court feels that there are sufficient other reasons such as existence of a point of law of sufficient importance.

As for reason of illegality raised by the applicant, the counsel for the respondent submitted that, when a plea of illegality has been pointed out it has to be apparent and visible on the face of the record. He said the courts are warned that not every illegality pleaded warrants extension of time. He said in the present case there is no illegality warranting extension of time because there is no order that crowned the applicant as the lawful owner of the suit land. What was ordered by the court was fulfilment of payment of unpaid the balance plus interest.

As for the second reason that the applicant was unaware of the proceedings at the Tribunal, the counsel for the respondent submits that the applicant was aware of the existence of all cases filed at the Tribunal including the execution proceedings and various notices issued by the

respondents especially the 3rd respondent pursuant to the letter Annexure SAT-4. He said the applicant has failed to account the days of the delay which is almost 8 years from the dates when various notices were issued to him. He said about 7 months from when he filed Misc. Land Application No. 7 of 2023 and the administrative letters dated 11/01/2023 in the tribunal have elapsed.

He relied on the cases of **Wambele Mtumwa Shahame V. Mohamed Hamis**, Civil Reference No. 8 of 2016 and **Inspector Sadiki & Others V. Gerald Nkya**, [1997] TLR 290 on accounting for the days of delay and **Dr. Ally Shabhan V. Tanga Bohora Jamaat**, [1997] TLR 305. He said the applicant has been very negligent in taking essential steps. He said the application has no merit and it ought to be dismissed with costs.

In his rejoinder the counsel for the applicant reiterated his submissions in chief. He further pointed out that when the decision of the High Court in Land Appeal No. 77 of 2011 was delivered the applicant was still the owner of the said suit land and the decree in Land Application No. 16 of 2008 was merely termed pre-mature. The counsel for the applicant stated there is nowhere in the decree of the High Court in Land Appeal No. 77 of 2011 gave authority to the respondent to execute Application N. 16 of 2008.

He stated Misc. Application No. 43 of 2013 shows the applicant was executing Application No. 16 of 2008 which he was not a party and said he has never paid any amount of money by the respondent. He said as there is illegality in the matters intended to be revised, the delay does not matter as the applicant was a decree holder and he has at no time settled the matter as such there is illegality on the records of Misc. Application No. 8 of 2015 and Misc. Application No. 43 of 2013.

I have carefully gone through the rival submissions filed in the court by the counsel for the parties and find the main issue for determination in this application is whether the application is meritorious. The court has found it is a known principle of law as stated by the counsel for the respondents that extension of time is entirely made on discretion of the court. The question as to how the court is required to exercise the stated discretion has been considered in number of cases. Some of the cases are **Alliance Insurance Corporation V. Arusha Art Limited**, Civil Application No. 512/2 of 2016 and **Ngao Godwin Losero V. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha (Both unreported) where it was stated in the latter case that: -

"It is the matter of general principle that whether to grant or refuse an application ... is entirely on the discretion of

the court, but that discretion is judicial and so it must be exercised according to the rule of reason and justice.”

The factors to be considered by the court while determining an application for extension of time have been stated in number of cases. One of the cases is **Lyamuya Construction Company Limited** (supra) where the factors to be considered were stated to be as follows: -

- 1. That, the applicant must account for all period of delay.*
- 2. The delay should not be inordinate.*
- 3. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- 4. If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.”*

While being guided by the position of the law cited hereinabove the court has found it is stated in the submission of the counsel for the applicant that the reasons for the applicant to seek for extension of time to apply for revision of the decision and proceedings of Misc. Application No. 08 of 2015 of the Tribunal is illegalities appearing on the stated application. The counsel for the applicant stated the illegalities appearing in the mentioned application is that the application was preferred to execute the decision made on Land Application No. 16 of 2008 of the

tribunal which was overturned by the High Court in Land Appeal No. 77 of 2011. He added that the second respondent proceeded to litigate in the matter on his personal capacity and executed his interest rather than the interest of the first respondent.

The court is in agreement with the counsel for the applicant that allegation of illegality in a proceeding or decision intended to be challenged if established is a good cause for granting extension of time. The court has come to the stated view after seeing it is a long-time standing position of the law established by the Court of Appeal in the case of **Principal Secretary, Ministry of Defence and National Service** (supra) where it was stated that;

"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."

However, in order for the point of illegality to be accepted as a ground for extension of time, it must clearly be established in the application and in the submission fronted to the court to support the application is a point of law of sufficient importance. It should not be assumed or be one which need long drawn process to discover the same.

The above stated view of this court is being fortified by the decision made by the Court of Appeal in case of **Lyamuya Construction Company Limited & Another V. T. C. C. L. & Others**, Civil Application No. 97 of 2003 (unreported) where it was stated that: -

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, 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 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.**"* [Emphasis added].

While being guided by the position of the law stated hereinabove the court has considered the applicant's deposition made in his affidavit and the submission made by his counsel that there are illegalities in Misc Application No. 08 of 2015 as it was executing the decision of Land Application No. 16 of 2008 which was overturned by the High Court in Land Appeal No. 77 of 2011 and declared the applicant is a lawful owner of the suit land but failed to see the alleged illegality in the stated decision. The court has found that, although it is true that the court allowed the

stated appeal with costs but there is nowhere in the Stated decision it is indicated the applicant was declared lawful owner of the suit land.

To the contrary the court has found the court stated in the mentioned decision that the second respondent who was respondent in the mentioned appeal was prematurely declared lawful owner of the suit land. The court clearly stated as rightly argued by the counsel for the respondents that the second respondent was required to pay the applicant the unpaid balance of purchasing the suit land before taking possession of the suit land and stated the amount to be paid to the applicant by the second respondent. For clarity purpose the court stated at the last page of the judgment as follows: -

"In the upshot, appeal is allowed with costs. the respondent to pay the unpaid balance of shs. 220,000/= to the appellant with interest at a commercial rate w.e.f year 1995, 1st May till when the respondent will have paid the whole sale price. Before the latter takes possession of the disputed land."

From the wording of the above quoted excerpt, it is crystal clear that the second respondent was required to pay the applicant the unpaid balance of purchasing the suit land and after paying the stated unpaid balance, the second respondent would have taken possession of the suit land which he had already been declared by the tribunal in Land

Application No. 16 of 2008 he is the lawful owner. Therefore, to say the applicant was declared by the High Court in the Land Appeal No. 77 of 2011 he is the lawful owner of the land suit is not correct as his ownership to the land suit was subject the second respondent's payment or non-payment of the unpaid balance of the price of purchasing the suit land.

The court has found the counsel for the respondents argues after the stated decision of the High Court the applicant filed in the tribunal Misc. Application No. 43 of 2013 which was between the applicant and the second respondent. The proceedings of the stated application which is annexed in the joint counter affidavit of the respondents shows the parties agreed to settle their dispute and the applicant was paid by the second respondent the sum of Tshs. 2,500,000/= as a settlement of their dispute.

The court has considered the argument by the applicant that he was not a party in Misc. Land Application No. 43 of 2013 of the tribunal and he has never been paid any amount to settle their dispute and find that is a point of law which need a long procees to establish the same. The court has come to the stated finding after seeing there is a proceeding of the mentioned application annexed in the counter affidavit showing clearly that the application was filed in the tribunal by the applicant and their dispute was settled after the second respondent agreed to pay the applicant the sum of Tsh. 2,500,000/=.

To the view of this court the alleged illegality is a point of law which need a very long process to establish the applicant was not a party in the mentioned application and he was never paid the stated amount of money because as stated in the case of **Halfan Sudi V. Abieza Chichili (1998) TLR 527** there is always presumption that a court record accurately presents what happened in court. In the premisses that makes the court to find the sated allegation cannot be said is a point of illegality which can be used to move the court to grant the applicant the order of extension of time is seeking from this court.

The court has considered the illegality of the second respondent to litigate on his own capacity in the mentioned application instead of litigating the interest of the first respondent but find to raise the stated point of locus standi of the second respondent to institute the application on his own capacity was an illegality which can be used as a ground of granting extension of time to revise the application which was determined eight years ago is not justifiable. To the view of this court that is not an illegality which can justify it to exercise its discretionary power to grant the applicant extension of time is seeking from this court.

As for the period of the delay for eight years, the court has found the only reason that has been advanced by the applicant is that he was the owner of the suit land from when he was declared so in Land Appeal

No. 77 of 2011 until January, 2023 when the respondents came to negotiate payment with more than hundred residents of the land in dispute and attached eviction order and demolition notice on the Street Government notice board.

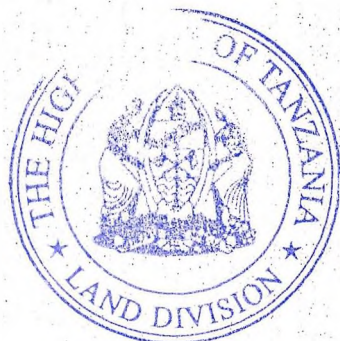
The court has found the stated reason is too general and insufficient to satisfy the principle set in the case of **Lyamuya Construction Company Ltd** (supra). The applicant was supposed to give clear reason as to why he delayed for such a long period of time from 2015 to take necessary measures for what he believed was his right. To the view of this court the reason for the days of the delay does not suffice to warrant the court to grant the extension of time the applicant is seeking from this court. In any event the time to be accounted for is inordinate. In the case of **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Appeal No. 3 of 2007** (unreported) the Court 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."

Basing on all what I have stated hereinabove the court has found the applicant has not managed to satisfy the court there is good or sufficient cause to justify it to exercise its discretionary power to grant him the extension of time is seeking from the court. Consequently, the

application is hereby not granted and it is accordingly dismissed for want of merit and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 21st day of September, 2023.



A handwritten signature in blue ink, appearing to read "I. Arufani".

I. Arufani
JUDGE
21/09/2023

Court:

Ruling delivered today 21st day of September, 2023 in the presence of Mr. Wallace Mfuko, learned advocate for the applicant and in the presence of Erick Erasmus Bitarohize, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



A handwritten signature in blue ink, appearing to read "I. Arufani".

I. Arufani
JUDGE
21/09/2023