

TANZANIA / JUDGMENT

JOSEPH PASCHAL extension of timefinal final final

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUB REGISTRY OF SHINYANGA
AT SHINYANGA MISC LAND APPLICATION No. 26696 OF 2024 (Arising from the Decision of
District Land and Housing Tribunal for Kahama at Kahama in the Land Application No. 118 of
2023 before Hon A.F. Kapinga dated on 2/04/2024) JOSEPH PASCHAL.....
APPLICANT (Administrator of the estates of the late Deme Maganga) VERSUS HAMISI MASOLWA
.....1ST RESPONDENT MASHAKA THUMUNI2ND
RESPONDENT MAGANGA MAIGE3RD RESPONDENT

RULING

20th November, 2024 & 31st January, 2025 MASSAM, J: - The applicant filed application for extension of time within which he can file an application for Revision. The application is made by way of chamber summons under Section 14 (1) of the Law of Limitation Act Cap 89 RE 2019 and Section 95 of the Civil Procedure Act Cap 33 R.E 2019 accompanied by an affidavit sworn by Joseph Paschal applicant supporting the application and opposed by the counter affidavit dully sworn by 1st and 2nd respondents. 1 The applicant enjoyed legal service of Mackanjero Ishengoma learned advocate whilst the 1st and 2nd respondents were represented by Stephano M. John advocate. When the matter was called for hearing, by consensus of the parties they agreed to argue this application by the way of written submission and the court granted prayers and scheduled the file date as follows applicant submission 20/11/2024, reply on 3/12/2024 and rejoinder if any on 10/12/2024 and ruling on 31/12/2024 the court orders were complied with. In his submission to support the application Mr. Ishengoma stated that the decision of Land Application No. 118/2024 by the District Land and Housing Tribunal of Kahama is fully of procedural illegality for admitting and entertaining the matter which raise more doubt and questions;- firstly, the proof of passing at Busangi ward tribunal for reconciliation, since the late Nzingo Maganga died on 20th Mach 2017 and the said land Application No. 118/2024 was filed at the District Land and Housing Tribunal of Kahama on January 2024, then who appeared on behalf of the late Nzingo Maganga on the said reconciliation meeting. Second, the proof of service of summons to the late Nzingo Maganga, to amount exparte hearing and judgment over the deceased person and lastly, the measures taken after the District Land 2 and Housing Tribunal of Kahama, become aware that the matter was instituted against the deceased person and legality of

such proceedings, to justify the *ex parte* hearing and judgment and the execution. Notably, Mr. Ishengoma submitted that it is undisputed that the tribunal entertained and adjudicated the matter of which in the eye of law it lacks jurisdiction to adjudicate since the land in question was a part of the estates of the late Deme Maganga, hence required to be adjudicated at probate court and not the tribunal. He cemented his argument by citing the case of *Sabina Apolinary vs Sospeter Venan* (Land Appeal No 37 of 2023) [2023] TZHC 209090. Additionally, Mr. Ishengoma stated that extension of time cannot be exercised unless a good cause has been demonstrated to the satisfaction of the court based over different factors including the determination if their existing point of sufficient important such as the illegality of the decision sought to be challenged has been explained and narrated in the case of *Lyamuya Construction company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania and Mohamed Salimin vs Assistant Registrar of Tittle & Others* (Civil Reference No. 12/2021)

[2024] TZHC 66. 3 Moreover, he argued that the issue of an application of extension of time to challenge the courts proceedings based on the procedural irregularity has over emphasised and explained in the case of *Tanzania Electricity Supply Co. Ltd vs Frank Kasinde & 10 Others* (Misc Labour Application No. 13/2023) [2024] TZHC.1364 On his part, Mr. Stephano argued that it was decided in Land Appeal No.83 /2014 that the late Nzingo Maganga was required to start her case fresh, at Busangi ward tribunal, but he never do that and on the contrary he sold the land in dispute to the 3rd respondent. It was submission of Mr Stephano that in 2023 the 1st and 2nd respondents decided to refer the land dispute to Busangi ward tribunal, but due to non-appearance of the 3rd respondent, they failed to reconcile the dispute hence the same was referred to Kahama District Land and Housing Tribunal, for adjudication but they came aware that Nzigo Maganga already passed they prayed to amend the application. Mr. Stephano submitted it is not true that the land in dispute ought to be decided by the probate court. The cases cited by the applicant to support his allegation are distinguishable from the case at hand. He referred the case of *Yusuph Haji vs Albert Munuo*, Civil Appeal No. 12/2019, CAT where it was held that, each case has to be decided on its own circumstances. 4 Additionally, Mr. Stephano said that the decision of the District Land and Housing Tribunal for Shinyanga in Land Appeal No. 83/2014 ordered the matter be retried *Denovo*, the same could not have be lodged to the probate court whilst it was initially instituted in the land tribunal and therefore the trial tribunal had jurisdiction to determine the matter and there is no miscarriage of justice in the way the tribunal adjudicated the matter and even if there was illegality alleged to be committed is curable under Section 45 of the Land Disputes courts Act Cap 216. Moreover, Mr. Stephano argued that the applicant has failed to account sufficient cause to be granted prayers sought as it was held in the case of *Lyamuya Construction Company Co. Limited vs Board of trustees of the Young Women Christian Association*, Civil Application No. 2 of 2010 CAT. Finally, he prayed the applicant's application be dismissed with costs. Having heard and consider the submissions by both parties, the issue is whether the application discloses sufficient cause for extension of time. To commence with, it is clear in the case of *Tanga Cement Company Limited Vs*

Masanga and Amos A. Mwalwanda, Civil Application No.6 of 2001, for a person to apply for extension of time, has to disclose sufficient reasons, which was defined as follows; 5 “What amounts to sufficient cause had not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant.” However, there are also other factors that are used to determine whether the applicant has shown good and reasonable cause such as the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant. See the case of Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported). Back to our case, Mr. Ishengoma argued that the said decision is tainted with procedural illegality; firstly, the proof of passing at Busangi ward tribunal for reconciliation, since the late Nzingo Maganga died on 20th March 2017 and the said land Application No. 118/2024 was filed at the District Land and Housing Tribunal of Kahama on January 2024, then who appeared on behalf of the late Nzingo Maganga on the said 6 reconciliation meeting. Second, the proof of service of summons to the late Nzingo Maganga, to amount *ex parte* hearing and judgment over the deceased person and the measures taken after the District Land and Housing Tribunal of Kahama, become aware that the matter was instituted against the deceased person and legality of such proceedings, to justify the *ex parte* hearing and judgment and the execution. More on that Mr. Ishengoma submitted that it is undisputed that the tribunal entertained and adjudicated the matter of which in the eye of law it lacks jurisdiction to adjudicate since the land in question was a part of the estates of the late Deme Maganga, hence required to be adjudicated at Probate court and not the tribunal. On his side, Mr. Stephano argued that it was decided in Land Appeal No. 83 /2014 the late Nzingo Maganga was required to start her case fresh, at Busangi ward tribunal, but he never do that and on the contrary he sold the land in dispute to the 3rd respondent. He added that in 2023 the 1st and 2nd respondents decided to refer the land dispute to Busangi ward tribunal, but due to non-appearance of the 3rd respondent, they failed to reconcile the dispute hence the same was referred to Kahama District Land and Housing 7 Tribunal, for adjudication but they came aware that Nzingo Maganga already passed they prayed to amend the application. It was submission of Mr Stephano that it is not true that the land in dispute ought to be decided by the probate court as the cases cited by the applicant to support his allegation are distinguishable from the case at hand. He referred the case of Yusuph Haji vs Albert Munuo, Civil Appeal No. 12/2019, CAT where it was held that, each case has to be decided on its own circumstances. Moreover, Mr. Stephano argued, that the decision of the District Land and Housing Tribunal for Shinyanga in Land Appeal No. 83/2014 ordered the matter be retried *denovo*, the same could not have be lodged to the probate court whilst it was initially instituted in the land tribunal and therefore the trial tribunal had jurisdiction to determine the matter and there is no miscarriage of justice in the way the tribunal adjudicated the matter and even if there was illegality alleged to be committed is curable under Section 45 of the Land Disputes courts Act Cap 216. Finally, he argued that the

applicant has failed to account sufficient cause to be granted prayers sought as it was held in the case of Lyamuya Construction Company Co. Limited vs Board of 8 trustees of the Young Women Christian Association, Civil Application No. 2 of 2010 CAT. I am aware that extension of time is discretionary power of the court upon the good cause being shown. The same was well elaborated In the case of Republic vs Yona Kaponda and 9 others [1985] TLR 84 where the court of appeal held that; - "In deciding whether or not to allow an application to appeal out of time, the court has to consider whether or not there is sufficient reasons not only for the delay, but also sufficient reasons for extending the time during which to entertain the appeal". Similar situation was stated in the case of Tanzania Revenue Authority vs. Tango Transport Company Limited, Civil Application No 5 of 2006, Addallah Salanga & 63 others vs Tanzania Habours Authority, Civil Application No. 4 of 2001, Wankira Benteel vs Kaiku Foya, Civil reference No. 4 of 2000. Mr. Ishengoma argued that Land Application No. 118/2024 was filed before passing at Busangi ward tribunal for reconciliation and no one appeared on behalf of the deceased. Also there was no proof of service of summons to the late Nzingo Maganga and the matter was heard exparte against the deceased and the measures taken by tribunal 9 after become aware that the matter was instituted against the deceased person. However, on his part, Mr. Stephano argued that the matter was referred to Busangi ward tribunal, but due to non-appearance of the 3rd respondent, they failed to reconcile the dispute hence the same was referred to Kahama District Land and Housing Tribunal, for adjudication but they came aware that Nzigo Maganga already passed they prayed to amend the application. Remarkably, in the case Attorney General of Zanzibar vs Laemthong Rice Company Limited and Another, Civil Application No. 729/15 of 2023 CAT at Zanzibar where the court of appeal at page 14 had this to say, I quote;- "It has been established that illegality is good cause for extension of time. In Principal Secretary Ministry of Defence and National Service(supra), this court stated that "In our view when the point at issue is one alleging illegality of the decision being challenged, the court has 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 record" 10 Guided by above authority and going through the submission from both parties. I associate myself with the submission of Mr. Ishengoma that the decision was tainted with some illegality because Land Application No. 118/2024 was filed before passing at Busangi ward tribunal for reconciliation and no one appeared on behalf of the deceased. Moreover, there was no proof of service of summons to the late Nzingo Maganga as required under Rule 61 2 and 3 of the Land Dispute Court (the District Land and Housing Tribunal) Regulation 2003 which resulted the matter being heard exparte against the deceased and not as alleged by the respondents they failed to reconcile the dispute hence the same was referred to the tribunal. From the above observation. I find that there was illegality in the said decision which is good cause for extension of time. Responding on the issue of jurisdiction, Mr. Ishengoma submitted the tribunal entertained and adjudicated the matter without jurisdiction to adjudicate since the land in question was a part of the estates of the late Deme Maganga, hence required to be adjudicated at probate court and not the tribunal.

However, Mr. Stephano submitted it is not true that the land in dispute ought to be decided by the probate court because it was not estate of the deceased but also the matter was ordered to be retried *denovo*, the same could not have be lodged to the probate court 11 whilst it was initially instituted in the land tribunal and therefore the trial tribunal had jurisdiction to determine the matter and there is no miscarriage of justice in the way the tribunal adjudicated the matter and even if there was illegality alleged to be committed is curable under section 45 of the Land Disputes Courts Act Cap 216. It is settled law that, where there is a competing claim between two parties over the deceased person's estate, it is only the probate and administration court which can explain how the deceased person's estate passed on to another party or beneficiary either by purchase or by gift. This position was settled in the case of *Mgeni Seifu v. Mohamed Yahaya Khalfani*, Civil Appeal No. 1 of 2009 CAT at Dar es Salaam (unreported) where the Court of Appeal of Tanzania at page 8 stated that: "It seems to us that there are competing claims between the applicant and the respondent, over the deceased person's estate. In the circumstance, only probate and administration court can explain how the deceased person's estate passed on to a beneficiary or a bonafide purchaser of the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of 12 administration, where the deceased died intestate or probate, where the deceased passed away testate" At page 14 the Court of Appeal concluded that: "As we have said earlier, where there is a dispute over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership." What I gathered from the extract above is that, it is now settled law that, where there are rival claims between parties over the property of the deceased, the only court which is seized with jurisdiction to decide on the ownership of that property is probate and administration court depending on whether the deceased died testate or intestate. This position was also underscored by this court in various the cases such as *Isack Stephen Mganga v, Joyce Derefa Machimu* [2022] TZHC 11617 TanzLII and *Makoye Joseph (The Administrator of the estate of the Joseph Nyara) v. Betha Ndodi (The Administratrix of the estate of Ndodi Itaba)* [2022] TZHC 14160 TanzLII. I have scanned submission from both parties and going through the records. The records revealed that 2nd respondent alleged that he was allocated suit land by the village council, while the 1st respondent claimed that the suit land belonged to his deceased father. Likewise, 13 Nzigo Maganga who was administratrix of Deme Maganga said that the suit land belonged to her late brother, now the applicant is administrator of the late Deme Maganga. I disagree with the submission from the respondents that the suit land is not estates of the late Deme Maganga and the tribunal had jurisdiction and there is no miscarriage of justice in the way the tribunal adjudicated the matter and illegality committed is curable under section 45 of the Land Disputes Courts Act Cap 216. From above analysis, the applicant had adduced sufficient reasons for extension of time, hence the application is allowed and the applicant is granted time to file revision from the decision of District Land and Housing Tribunal for Kahama in Land Application No. 118/2023 and shall be lodged within 14 days from the date of delivery of this ruling. In regard of nature of this case . I make no orders for costs. It is so ordered.

DATED at SHINYANGA this 31st day of January, 2025. R. B. Massam JUDGE 14 15

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