

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 302/17/2017

SAMWEL KOBELO MUHULO APPLICANT
VERSUS

NATIONAL HOUSING CORPORATION RESPONDENT

(Application for extension of time within which to file revision from the proceedings and order of the High Court of Tanzania, Land Division at Dar es Salaam)

(Mansoor, J.)

dated 10th day of December, 2012

in

Land Revision No. 23 of 2012

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RULING

1st June & 26th July, 2018

NDIKA, J.A.:

By a notice of motion made under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), Samweli Kobelo Muhulo, the applicant herein, prays against the National Housing Corporation, the respondent, for extension of time within which to apply for revision of the proceedings and order of the High Court of Tanzania, Land Division dated 10th December, 2012 in Land Revision No. 23 of 2012. The application is supported by an affidavit deposited by the applicant. In opposition to the application, the

respondent filed an affidavit in reply deposed by Mr. Aloyce Sekule, an Advocate of the High Court and a Legal Officer of the respondent.

To facilitate appreciation of the issues involved in this application, it is necessary to begin with the background to the matter at hand as can be gathered from the notice of motion and the supporting affidavit.

It all began at the District Land Housing Tribunal of Morogoro at Morogoro (the Tribunal) in Application No. 125 of 2010 where the respondent sued the applicant for ownership and possession of landed property known as Plot No. 53, Kingo Street, Morogoro Municipality. In opposition to the suit, the applicant raised a preliminary objection to the effect that the Tribunal had no jurisdiction to adjudicate on the matter. The Tribunal dismissed the objection and proceeded with the matter to the chagrin of the applicant. At the behest of the applicant, RK Rweyongeza & Co. Advocates submitted a letter dated 26th July, 2011 to the Registrar, High Court, Land Division protesting against the ongoing proceedings before the Tribunal. Subsequently, the applicant instituted revisional proceedings before the High Court, Land Division (Land Revision No. 23 of 2012) challenging the legality and propriety of the proceedings before the Tribunal. By its ruling dated 10th December, 2012, the High Court struck out

the said proceedings upon sustaining the respondent's preliminary objection that the requested revision was unmaintainable because the applicant had recourse to appeal and that the revision was, in addition, incompetent for omitting the record of proceedings of the Tribunal.

Aggrieved, the applicant duly lodged in this Court revisional proceedings vide Civil Application No. 17 of 2013 for the Court to examine the correctness, legality and propriety of the proceedings and order of the High Court made on 10th December, 2012. That application came to naught; it was struck out on 22nd June, 2017 on account of being incompetent as it was not accompanied with the record of proceedings of the Tribunal and the High Court. Then, the applicant approached the High Court seeking a copy of the record of proceedings of the Tribunal and the High Court. By 13th July, 2017 when he lodged the present application the said record of proceedings was yet to be supplied.

In justifying condonation of the delay in applying for revision, it is contended on the notice of motion that:

"1. The applicant is yet to be supplied with the proceedings of the District Land and Housing Tribunal of Morogoro and other documents that will

have to form a Record of Revision but they are yet to be supplied.

2. There is good cause for the grant of extension of time within which to lodge the application because:

i) Applicant had filed Civil Application No. 17 of 2013 prematurely because it lacked proceedings of the lower court which warrant revision to the Court of Appeal hence it was struck out on the 22nd June, 2017.

ii) There is a true confusion in the Ruling of the High Court on the parties as against the facts before the High Court this is an error by the Court.

iii) It is in the interest of justice that the correctness, propriety and legality of the cited proceedings and decision of the High Court be examined by this Honourable Court as it goes to the jurisdiction of the Tribunal.”

At the hearing before me, Ms. Anna Marealle, learned counsel, represented the applicant while the respondent had the services of Mr. Bethuel Peter, learned counsel.

Having adopted the notice of motion and the accompanying affidavit, Ms. Marealle prayed that the application be granted on the ground that the

applicant had fully accounted for the delay and that the impugned order of the High Court was fraught with material irregularities.

Replying, Mr. Bethuel adopted the contents of the affidavit in reply and argued that the application be dismissed on two grounds: first, he contended that the applicant failed to demonstrate that there was good cause for extending time. Elaborating, he said that the applicant failed to explain away the delay of twenty-one days from 22nd June, 2017 when his initial application for revision was struck out to 13th July, 2017 when this matter was lodged. It was his view that there was no reason why this matter was not filed promptly. The learned counsel cited this Court's decision in **Isawakwe Iduwandumi Ng'unda v. Jenifer Danister & Another**, Civil Application No. 339/02/2017 (unreported) for the proposition that each day of delay must be accounted for. Secondly, the learned counsel denied that the impugned decision of the High Court contained apparent material irregularities. In his view, the said decision was soundly based upon two points of law that were upheld by the Court. Accordingly, he beseeched that the application be dismissed with costs.

In a brief rejoinder, Ms. Marealle insisted that there was a complete misapprehension of facts by the learned Judge that resulted in the

confusion before the High Court. The High Court, she argued, ought to have intervened and dealt with the question whether the Tribunal had jurisdiction to try the suit lodged by the respondent.

I have carefully considered the notice of motion, the supporting affidavit, the affidavit in reply and the competing learned submissions. I think it bears reciting that although the Court's power for extending time under rule 10 of the Rules is both broad and discretionary, it can only be exercised if good cause is shown. Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion under rule 10, the Court must consider factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged and the overall importance of complying with prescribed timelines: (see, for instance, this Court's unreported decisions in **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987; **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001; **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013; **William Ndingu @ Ngoso v. Republic**,

Criminal Appeal No. 3 of 2014; **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] TLR 387; and **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010).

Turning to the merits of this application, it is common cause that the applicant's quest for extension of time to institute a fresh application for revision before this Court for examining the correctness, propriety and legality of the proceedings and order of the High Court of Tanzania, Land Division dated 10th December, 2012 in Land Revision No. 23 of 2012 arose following the striking out of his previous application for revision on 22nd June, 2017. This implies that the period between 10th December, 2012 when the impugned order was made by the High Court and 22nd June, 2017 when the botched application for revision was struck out constitutes excusable technical delay. Mr. Bethuel appeared to agree with this position and so he only assailed the applicant for not lodging this application promptly after the first application for revision was struck out. It was his view that the applicant took too long until 13th July, 2017 when he lodged this matter and that a total of twenty-one days from 22nd June, 2017 was unaccounted for. That may be Mr. Bethuel's view but in all fairness to the

applicant, it is averred in Paragraph 21 of the supporting affidavit that after the initial revision application was struck out his advocates re-approached the High Court with a request dated 3rd July, 2017 for a copy of the proceedings and drawn order in Land Revision No. 23 of 2012 as well as a copy of the proceedings and drawn order of the Tribunal in Application No. 125 of 2010 that gave rise to the revision before the High Court. It is further averred that by the time this matter was lodged on 13th July, 2017 the applicant was yet to be supplied with the requested documents, without which he could not re-launch his bid for revision. In the circumstances, I am disinclined to accept Mr. Bethuel's criticism of the applicant's promptness in lodging this matter. It is, therefore, my view that the applicant has sufficiently explained away the delay. In addition, I have taken into account that it has not been suggested that the respondent would suffer any prejudice if time is extended. Accordingly, I find good cause for extending time as requested.

Since the foregoing conclusion sufficiently disposes of this matter, I find no need to consider the other limb of the application that time ought to be extended on account of the material irregularities or illegalities allegedly contained in the proceedings and decisions sought to be revised.

The above said, I grant the application. The applicant is hereby granted sixty days within which to file the intended application for revision. Costs of this application shall abide by the outcome of the intended revision.

DATED at **DAR ES SALAAM** this 24th day of July, 2018.

G. A. M. NDIKA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



S. J. Kainda
S.J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL