

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 264 OF 2020**

*(Arising from High Court (Land Division) in Land Application No. 932 of 2017 as per Hon. Wambura, J and Land Application No. 198 of 2018 )*

**KABULA AZARIA NG'ONDI.....1<sup>ST</sup> APPLICANT**

**ADIEL KUNDASENY MUSHI .....2<sup>ND</sup> APPLICANT**

**NEEMA ADIEL MUSHI.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**MARIA FRANCIS ZUMBA.....1<sup>ST</sup> RESPONDENT**

**IGALULA AUCTION MART LIMITED.....2<sup>ND</sup> RESPONDENT**

*Date of the ruling 11/12/2020*

*Date of the last order 7/10/2020*

**RULING**

**I. MAIGE, J**

On 9<sup>th</sup> March 2020, my learned sister Judge Maghimbi, vide Misc. Land Application No. 198 of 2018, granted the applicants herein, an extension of time to appeal against the decision of this Court in Misc. Land Application No. 932 of 2017. They were to file their intended application for review

within 15 days from the date thereof. For the reasons which is the subject of this deliberation, the applicants could not file his intended application within the allotted time. By this application, he is inviting the Court to exercise its indulgency under section 93 of the Civil Procedure Code, Cap. 33, R.E., 2019 and enlarge time within which to lodge that application.

The applicants justify the delay on account of sickness of the counsel who was in the conduct of the matter Mr. Peter Nyangi. He had been sick between 15<sup>th</sup> to 27<sup>th</sup> day of March 2020. The claim is substantiated by a medical report in **annexure B** of the affidavit. It is further deposed that advocate Stole who works together with advocate Nyangi could also not take up the matter as he has been between 23<sup>rd</sup> to 27<sup>th</sup> March 2020 to Arusha.

The sickness of the said advocate much as the absence of advocate Stola in Dar Es Salaam has not been doubted in the counter affidavit. The respondents claim however that the applicants have not accounted for every day of delay.

The disposal of the application was by way of written submissions which were presented in due compliance of the court direction. Mr. Francis Stola, learned advocate presented the written submissions for the applicants and advocate Regina Herman for the first respondent. The second respondent did not file any written submissions. I take it that he has foregone her right to be heard. I have considered the rival submissions and I will consider hereunder whether sufficient cause for time enlargement has been established.

In his submissions in support of the application, it would appear to me, Mr. Stolla, for the applicant while conceding that the delay of 57 days from 27<sup>th</sup> March 2020 to the date of filing the instant application has not been accounted for, it is his submissions that, the delay is not inordinate. With respect, I cannot agree with him. The time that was extended for the applicants to lodge their intended review were 15 days from the date of the decision. In the circumstance, the delay of 57 days is in ordinate.

Mr. Stola has also justified the delay on account of illegality. The point of illegality was considered by Madame judge Maghimbi in her ruling granting

extension of time. The complaints by the applicants was that they were denied a right to be heard in as much as they were not served with a summons to appear. In the ruling extending time to apply for review, the applicants were afforded right to be heard on the issue by way of review. They did not pursue such right within the allotted time. They cannot again be heard seeking indulgence of the Court on the similar ground.

In my view therefore, the application is devoid of any merit and it is accordingly dismissed with costs.



I. Maige

**JUDGE**

**11/12/2020**

**Date: 11/12/2020**

**Coram:** Hon. C. Tengwa - DR

For the 1<sup>st</sup> Applicant )  
For the 2<sup>nd</sup> Applicant ) Peter Nyangi, Advocate  
For the 3<sup>rd</sup> Applicant )

For the 1<sup>st</sup> Respondent: Regina Herman

For the 2<sup>nd</sup> Respondent: Absence

**RMA:** Bukuku

**COURT:**

Ruling delivered today in the presence of the applicant parties and then respective counsels Peter Nyangi and Regina Herman.



C. Tengwa

**DEPUTY REGISTRAR**

**11/12/2020**