

**IN THE COURT OF APPEAL OF TANZANIA
AT SHINYANGA**

CIVIL APPLICATION NO. 482/14 OF 2019

JAMES ANTHONY IFADA.....APPLICANT

VERSUS

HAMIS ALAWI.....RESPONDENT

**(Application for extension of time to lodge notice of appeal out of time against the
Judgement and Decree of the High Court of Tanzania at Shinyanga)**

(Makani, J.)

Dated the 23rd Day of November, 2018

in

Land Appeal No. 33 of 2015

RULING

10th & 13th August, 2020

KEREFU, J.A.:

James Anthony Ifada, the applicant herein has lodged this application on 20th September, 2019 praying for an order of extension of time to lodge a notice of appeal and leave to appeal against the judgement and decree of the High Court of Tanzania at Shinyanga (Makani, J.) dated 23rd November, 2018 in Land Appeal No. 33 of 2015. The application is brought by way of a notice of motion under Rules 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The application is supported by an

affidavit duly deposed by the applicant himself. On the other hand, the respondent has filed an affidavit in reply opposing the application.

It is on record that, in 2013, the respondent instituted a case against the applicant in the District Land and Housing Tribunal (DLHT) for Shinyanga at Shinyanga. In that case, the respondent claimed that the applicant had purchased a parcel of land located at Plot No. 129 Block 'A', Majengo area in Kahama District (disputed land) from one Yusuph Elias in 1996 but did not process the transfer of the said land until 2009 after the death of the said seller. The respondent also claimed that he is the administrator of the estate of his brother, the late Kasesa Alawi who was the care taker of the disputed land which was acquired by their late father Alawi Iddi Makira in 1983. The DLHT after hearing the parties and considering all evidence adduced and tendered before it, decided the matter in favour of the respondent.

Aggrieved, the applicant unsuccessfully appealed to the High Court. Again, being aggrieved by the decision of the High Court but being aware that he was out of time, the applicant decided to lodge Mis. Civil Application No. 02 of 2019 in the High Court seeking extension of time.

However, the said application was dismissed with costs on 26th July, 2019 on account of failure to adduce good cause for the delay. Still aggrieved but again being out of time to lodge a second bite application for extension of time in this Court under Rule 45A (1) of the Rules, the applicant decided to lodge the current application as indicated above. In the Notice of Motion, among other things, the applicant has raised the following four (4) grounds alleging existence of illegalities in the impugned decision of the High Court: -

- (a) That, the High Court wrongly refused to acknowledge the revocation of the letter of offer over the disputed land done by the District Land Officer despite the fact that in law the President has delegated his powers to authorize Land Officers to revoke offers of rights of occupancy upon breach of the terms therein;*
- (b) That, the decision of the High Court is based on non-giving of notice of revocation of letter of offer of right of occupancy formerly allocated to Kasesa Alawi (deceased) notwithstanding the fact that the said land was abandoned by Alawi Iddi Makira as no land rent has been paid for the same, that is why it was allocated to Yusuph Elias from whom the applicant purchased the same;*

(c) That, the High Court erred in law to be influenced by the speedy transfer of the disputed land, as speedy transfer cannot be unlawful, if correctly done;

(d) That, the High Court wrongly failed to consider the time of over ten (10) years which the applicant has held the disputed land and has been paying land rent without the opposite party coming forward and claiming for the same.

When the application was called on for hearing, both parties appeared in their personal capacities without legal representation. It is noteworthy that no written submissions were filed by the parties and they thus addressed the Court under Rule 106 (10) (b) of the Rules as amended by GN. No. 344 of 2019.

Submitting in support of the application, the applicant commenced his submission by fully adopting the contents of the Notice of Motion and the supporting affidavit. He then, briefly clarified that, in the Notice of Motion and the supporting affidavit he had indicated the reasons for the delay and grounds of illegalities which constitute good cause to warrant grant of this application. As for the reasons for the delay, the applicant submitted that he delayed to lodge his application because he was sick. He said, his delay was not intentional but it was due to ill health as he was suffering from

serious heart decease and high blood pressure, the situation which weakened his body to manage to make a follow up on the case.

As for the illegalities, the applicant argued that, the impugned decision is tainted with illegalities as the learned High Court judge failed to observe that the respondent's claim over the ownership of the disputed land was lodged after lapse of more than fifteen (15) years. He clarified that he purchased the disputed land in 1996 from Yusuph Elias who was legally allocated the land in 1994 by the District Land Officer. He said, since that time he became the lawful owner of the disputed land and started to develop it including payment of all land rent without any interference until 2011, when the respondent lodged the case claiming ownership of the same. He argued further that, even when the respondent started execution of the High Court's decision, he faced an obstacle because, as per the record in the Land Office, he is the lawful owner of the disputed land. He said, the respondent's letter of offer which was acted upon by the High Court is a fake document as it was revoked by the District Land Officer after the late Alawi Iddi Makira had abandoned the disputed land. Based on his submission, the applicant urged me to grant the application to enable him to address the alleged illegalities in the impugned decision.

In response, the respondent strenuously opposed the application and the oral submission made by the applicant. He argued that the applicant has failed to show good cause for the delay as his claim of sickness cannot be acted upon for lack of medical proof. On the point of illegalities, the respondent argued that the decision of the High Court is correct and it has no any illegalities to warrant grant of this application. He argued that the original owner of the disputed land was his late father, Alawi Iddi Makira who started to own it in 1984. That, after his death, his late brother one Kasesa Alawi, took care of the said land until 1996 when he died. He further submitted that, after the death of his late brother, he was appointed the administrator of his estate and that is when he filed the suit against the applicant which was decided in his favour. He thus prayed that the application be dismissed with costs for lack of good cause.

In a brief rejoinder, the applicant reiterated what he submitted earlier and emphasized his prayer that the application be granted to enable him to address the pointed-out illegalities in the impugned decision.

From the foregoing, it is evident that the application before me is premised under the provisions of Rule 10 of the Rules. The said Rule empowers the Court to exercise its discretion to grant an application for

extension of time, if the applicant adduces good cause to justify the delay. For the sake of clarity, I have endeavoured to reproduce the said Rule herein below: -

*“The Court may, **upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal,** for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.” [Emphasis added].*

Therefore, the requirement which the applicant has to satisfy under the above cited provision of the law is to show good cause for the delay in filing the application. There are numerous authorities to this effect and some of them include, **Kalunga & Company Advocates Ltd v. National Bank of Commerce Ltd** [2006] TLR 235; **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women’s Christian Association of Tanzania**, Civil Application No. 02 of 2010 and **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 (both unreported) to mention, but a few.

It has been also held in times without number that, a ground alleging illegality constitutes good cause for extension of time. Among the decisions include, **Principal Secretary Ministry of Defence and National Service v. Devram P. Valambhia** [1992] TLR 387 and **Kalunga & Company Advocates Ltd** (supra). In **Principal Secretary Ministry of Defence and National Service**, (supra) the Court stated 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 added].*

Therefore, in the application at hand, the main issue to be considered is whether or not the applicant has advanced good cause to warrant grant of this application. It is on record that the applicant has submitted two reasons to support his application. The first reason for the delay is found under paragraph 8 of the supporting affidavit that the delay was due to applicant's ill health as he was suffering from heart decease and high blood pressure which weakened his health to the extent of failing to make a

follow-up on his case. In his oral submission, the applicant as well stated that he was sick and that is why he failed to lodge the application in time. This claim was vehemently disputed by the respondent who argued that the same cannot constitute a good cause as the applicant has not submitted any proof as regards his sickness. I am in agreement with the respondent on this point because, apart from making a blanket claim that he was in bad health, the applicant has not mentioned any specific period or dates when he was ill. In addition, the alleged sickness is not supported by a medical report or medical chits which could be acted upon by the Court. In the circumstances, I am satisfied that the first reason for the delay advanced by the applicant is untenable.

On the second ground alleging existence of illegalities in the impugned decision, I am mindful of the fact that, as a single Justice, I am not supposed to dig much on the same, but only to consider as to whether the same constitute good cause to warrant grant of this application. In his submission, the applicant contended that the respondent (as an administrator of the estate of the late Kasesa Alawi) started to claim for the ownership of the disputed land after lapse of more than fifteen (15) years, but the same went unnoticed by the High Court. He also submitted that he

has been in lawful occupation of the disputed land since 1996 when he purchased it from Yusuph Elias to date and has been paying all land rent to the land office without any interference.

On the other side, the respondent submitted that there are no illegalities in the decision of the High Court because the original owner of the disputed land was his late father, Alawi Iddi Makira who started to own it in 1984. That, after his death, his late brother one Kasesa Alawi, took care of the same until he died in 1996. Then, when appointed an administrator of the estate of the late Kasesa Alawi, the respondent filed a case against the applicant in 2011 claiming ownership of the same. It was also the submission by the applicant that the said late Alawi Iddi Makira had since abandoned the disputed land and the letter of offer relied upon by the respondent before the High Court was revoked long time ago by the District Land Officer and the disputed land was re-allocated to Yusuph Elias in 1994.

In my considered view, the arguments made by the parties on the second limb of the applicant's reason for seeking extension of time raises the issue on the illegality or otherwise of the decision of the High Court.

For that reason, I wish to be guided by the decision of this Court in the case of **Principal Secretary Ministry of Defence**, (supra) where the Court, while considering a ground of illegality submitted before it, observed that: -

"We think that where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is sufficient importance to constitute sufficient reason within the meaning of rule 8 [now rule 10) of the Rules for extending time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand."

The Court went on to state 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."

Under the guidance of the above settled principle, I am satisfied that the alleged illegalities in the decision sought to be challenged amount to good cause, hence warrant grant of extension of time. It is my respectful opinion that granting such an extension will avail an opportunity to the

applicant to submit his application for extension of time as a second bite and ultimately address the alleged illegality in the impugned decision.

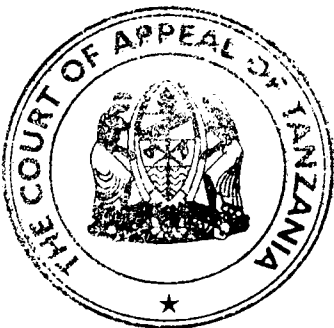
In the premises, I find merit in the application and it is hereby granted. The applicant should lodge the intended application within fourteen (14) days, from the date of delivery of this ruling. Costs to be in the cause.

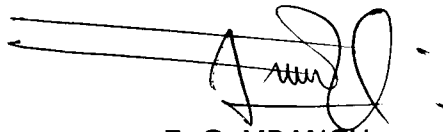
It is so ordered.

DATED at **SHINYANGA** this 12th day of August, 2020.

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling delivered this 13th day of August, 2020 in absence of the Applicant but dully informed/served and in absence of Respondent but presented by her wife called Asha Juma, is hereby certified as a true copy of the original.




E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL