

THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY

IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBEYA

**MISCELLANEOUS LAND APPLICATION NO. 80 OF 2017**

*(From the District Land and housing Tribunal for Mbeya at Mbeya in Land  
Application No.149 of 2014)*

**LULU SACCOS LTD.....APPLICANT**

**VERSUS**

**ALFONCE GEORGE.....1<sup>ST</sup> RESPONDENT**

**DEBORA GEORGE.....2<sup>ND</sup> RESPONDENT**

**UPENDO GEORGE.....3<sup>RD</sup> RESPONDENT**

**JOHN SWILA.....4<sup>TH</sup> RESPONDENT**

**RULING**

Date of Last Order: 17/04/2020

Date of Ruling : 17/06/2020

**MONGELLA, J.**

The applicant herein is moving this Court for an order to extend time within which to lodge an appeal against the decision of the District Land and Housing Tribunal (Tribunal) in Land Application No. 149 of 2014. The application is brought under section 41 (2) of Cap 216 as amended by Miscellaneous Amendment Act No. 7 of 2016. The application was supported by the affidavit of one Mary L. Mgaya, learned advocate for the applicant. The application was argued by written submissions.

In her affidavit in support of the application, as well as in her written submission, Ms. Mgya advanced reasons for the delay to the effect that the judgment in the Tribunal was pronounced without notice to the applicant and thus she could not take action immediately after the judgment was pronounced. She stated that she got notice of the pronouncement of judgment on 30<sup>th</sup> June 2017 and promptly made the application for extension of time. She added that from 30<sup>th</sup> June 2017 to 24<sup>th</sup> July 2017 when this application was filed in this Court 24 days had already elapsed. She gave reasons for the further delay of 24 days to the effect that the applicant is a legal person, a limited company, therefore it needed to be well informed, guided and legally advised on the next legal process and for it to make deliberations and resolution on the matter and instruct the advocate on the legal steps to be taken against the decision of the Tribunal.

In addition Ms. Mgya submitted that there is an illegality in the impugned decision to the effect that the opinion of assessors do not feature anywhere despite the Hon. Chairman mentioning in his judgment that he joins hands with one of the assessors and differs with the other. On the issue of assessors she referred to the case of **Edina Adam Kibona v. Absalom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 and that of **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017. In both cases the judgment and proceedings of the Tribunal were quashed for lack of assessors' opinion. On the question of illegality she referred to the case of **Tropical Air (TZ) Limited v. Godson Eliona Moshi**, Civil Application No. 09 of 2017 (CAT at Arusha, unreported) which cited in approval the

case of **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and the Liquidator of Tri-Telecommunication (T) Ltd v. Citibank of Tanzania Limited**, Consolidated References No. 6, 7 and 8 of 2006 (unreported). In this case it was held:

*"It is settled law that, a claim of illegality of the challenged decision, constitutes sufficient reasons for extension of time...regardless of whether or not a reasonable explanation had been given by the applicant..."*

She also referred to the case of **Shelina Midas Jahanger & 4 Others v. Nyakutonya NPF Co. Ltd.**, Civil Application No. 186 of 2015 (CAT at Mwanza, unreported) in which it was held:

*"...This Court therefore, has a duty to ascertain this point of law and if established to make the appropriate measures to rectify the situation. This would be possible if the Court will grant extension of time to the applicant to lodge an application for leave to appeal out of time, so as to pursue her appeal. We take this to be a point of law of great public importance to be decided by this Court whatever its consequences."*

For the above reasons, Ms. Mgaya prayed for the application to be granted.

On the other hand the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents in their written submission drawn by Ms. Rose Kayumbo, learned advocate opposed the application. They first argued that it is the duty of a party to a case to make follow up on the case. They challenged the applicant's contention that the judgment was pronounced without him being notified and

argued that the applicant was negligent for not following up on the case. They as well challenged the applicant's contention that he had to wait for 24 days for the resolution of the company on the way forward. They argued that 24 days is quite a long time. Citing the case of **Kefasi Kenya Mwambenja v. Helena Chawe**, Misc. Land Application No. 20 of 2019 (HC at Mbeya, unreported) they argued that the applicant was required to account for each day of the delay.

On the issue of illegality, the respondents argued that the same cannot be invoked to cure the failure to account for each day of the delay. They cited the case of **Tanzania Harbour Authority v. Mohamed R. Mohamed** [2003] TLR 76 and that of **Kefasi Kenya Mwambenja** (supra) in which the court ruled that an extension of time cannot be granted on every illegality raised by the applicant. They argued further that the illegality raised by the applicant's counsel on opinion of assessors cannot be taken to be a point of illegality because the issue is whether the same prejudiced the applicant. They said that the parties were not prejudiced as the Tribunal decision was based on the requirement of judgment. For these arguments they prayed for the application to be dismissed with costs.

I have considered the submissions from both parties. The issue to be determined is whether there is sufficient reason to warrant the grant of extension of time to lodge an appeal. The applicant raised two major reasons first being waiting for company resolution and instruction to the advocate to take further legal steps and second being illegality for lack of assessors' opinion. I shall not entertain the first reason on the ground that the same is a matter of fact and was never stated in the affidavit in

support of the application. It is only points of law which can be raised at any stage of the proceedings. All matters of facts or evidence have to be pleaded or stated in the affidavit before hearing. See: **BETAM Communications Tanzania Limited v. China International Telecommunications Construction Corporation and Another** (2017) TLS 465.

On the issue of illegality, I first agree with the respondents' position that not every illegality warrants the grant of extension of time. In my settled view an illegality can only be entertained if it meets certain criteria. That is, if the illegality is apparent on face of record, is of sufficient importance and the determination of it shall not involve a long drawn process of argument. These criteria were settled by the Court of Appeal in 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 (unreported). The applicant has argued that the illegality in the impugned Tribunal judgment is to the effect that the Tribunal assessors' opinion does not feature anywhere in the Tribunal record. See also: See: **Kalunga and Company Advocates v. National Bank of Commerce Ltd**, Civil Application No. 124 of 2005; **Aruwaben Chagan Mistry v. Naushad Mohamed Hussein & 3 Others**, Civil Application No. 6 of 2016 **Jehangir Aziz Abubakar v. Balozi Ibrahim Abubakar & Another**, Civil Application No. 79 of 2016

In my settled view therefore, the illegality raised in this application meets the criteria settled in **Lyamuya Construction** (supra). The law as settled in so many cases including the ones cited by Ms. Mgaya, that is, **Edina Adam Kibona** (supra) and **Tubone Mwambeta** (supra) is to the effect that

the opinion of assessors has to be filed in writing in the Tribunal and the proceedings and judgment have to clearly show the assessors' active participation in the matter. The illegality is therefore of sufficient importance because it is mandatorily provided under the law to the extent that non-compliance thereof vitiates the whole Tribunal proceedings. It shall also not involve a long drawn process of argument because it is an error that is apparent on face of record. The illegality cannot be rectified unless the same is tested on appeal. The case of **Kefasi Kenya Mwambenja** (supra) and that of **Tanzania Harbour Authority** (supra) are distinguishable to the matter at hand because in those cases the illegality raised by the applicant was not clearly stated.

In the upshot, I grant the applicant's application for extension of time basing on the point of illegality in the impugned Tribunal decision. The applicant shall lodge his appeal within 14 days from the date of this ruling.

Dated at Mbeya on this 17<sup>th</sup> day of June 2020

  
**L. M. MONGELLA**  
**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 17<sup>th</sup> day of June 2020 in the presence of Ms. Rehema Mgeni, learned advocate, holding brief for Ms. Mary Mgaya, learned advocate for the applicant and the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents.



  
**L. M. MONGELLA**  
**JUDGE**