

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

MISCELLANEOUS LAND APPLICATION NO. 24 OF 2020

(From the decision of the High Court of Tanzania at Mbeya in Land Appeal No. 36 of 2015. Originating from the District Land and Housing Tribunal for Mbeya at Mbeya in Application No. 179 of 2009)

LENA KAMBINDA MBWAGA.....APPLICANT

VERSUS

NIKUPALA GEORGE MWAKASYUKA (As Administratrix
of the estate of the Late ELIZABETH SIMBA).....**RESPONDENT**

RULING

Date of Last Order: 23/07/2020
Date of Ruling : 02/09/2020

MONGELLA, J.

The applicant is seeking to be granted extension of time within which to file a notice of appeal to the Court of Appeal of Tanzania and to file an application for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 36 of 2015. She was represented by Mr. Simon Mwakolo, learned advocate.



Mr. Mwakolo advanced to main reasons for seeking the extension of time. First, he asserted that the applicant was under technical delay whereby she filed several applications in this Court thus did not stay idle on the matter. He referred to paragraph 5, 6, and 7 of the affidavit in support of the application whereby the applicant stated that she filed Misc. Land Application No. 67 of 2017 in this Court which was struck out on technicality involving pendency of notice of appeal after the striking out of Misc. Land Application No. 65 of 2016. She said that the ruling was to the effect that upon Misc. Land Application No. 65 of 2016 being struck out, the notice of appeal pending before the Court of Appeal ceased to exist. Thereafter, the applicant lodged a memorandum of review in this Court in Misc. Land Application No. 37 of 2018 which was dismissed. She lodged another application being Misc. Land Application No. 106 of 2019 which was also dismissed for being defective. The applicant and his advocate thus argued that the delay in filing this application was due to the time spent in prosecuting the mentioned several applications.

Second he contended that there exist illegalities in the trial proceedings. Describing the alleged illegalities, he first submitted that the record shows that there was irregular change of assessors. Referring to the trial Tribunal records, Mr. Mwakolo indicated the way in which the assessors were irregularly changed. For instance, he indicated that on 19/05/2011 the members were one Ongara and Kangele. On this day issues were framed and the testimony of PW1 taken. On 30/01/2012 the members were one Kalongole and Ongara, whereby the testimony of PW2, PW3, PW4, PW5 and PW6 was taken. Then on 07/08/2013 when the testimony of DW1, DW2 and DW3 was recorded, the assessors were one Kalongole and Kangele.

On 02/03/2015 when the testimony of DW4 was recorded there were no assessors. And on 06/02/2015 when the case was scheduled for locus in quo visit, the assessors were one Kangele and Sara, whereby the said Sara did not hear a single piece of evidence.

Mr. Mwakolo pointed another irregularity to the effect that the proceedings and judgment of the Tribunal do not indicate the opinion of assessors being taken. Citing CAT decisions in **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 and **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 (both unreported), he argued that this irregularity vitiates the proceedings and judgment of the trial Tribunal. He argued further that the issue of composition of the Tribunal touches the jurisdiction of the Tribunal, therefore though not raised on the appeal to the High Court, it can be raised at any stage including on a second appeal. To that effect he cited the case of **Tanzania-China Friendship Textile Co. Ltd v. Our Lady of Usambara Sisters** [2006] TLR 70.

Still on the irregularities by the trial Tribunal, Mr. Mwakolo argued that they constitute a sufficient reason for extension of time. To buttress his point he referred to the case of **Kalunga & Company Advocates v. National Bank of Commerce Ltd.** [2006] TLR 235 in which it was held:

"In our view, the point at issue is one alleging illegality of the decision to be challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and if the illegality be established to take appropriate measures to put the matter and the record straight."



On his part, Mr. Mika Mbise, who represented the respondent, opposed the application. He argued that the applicant has deliberately combined the two prayers to hide the mistakes done in the process. He contended that it is a salutary rule of law that in every application for enlargement of time, an applicant must make it clear to the court considering the application as to when the time started to run, when it elapsed by mentioning the law setting the limit, and when the applicant brought the application to court. He said this information helps the court in examining the length of the delay for which the application is made. He contended that the applicant did not furnish all this information.

Mr. Mbise proceeded to narrate the events as they appear in the respondent's counter affidavit. He said that the impugned judgment was delivered on 28th June 2016 in favour of the applicant. Then the deceased, Elizabeth Simba appealed to this Court in Land Case No. 36 of 2015 and won the case in the judgment delivered by this Court on 28th June 2016. He said that the application for leave to appeal was struck out on 28th June 2017 in Misc. Land Application No. 65 of 2016. Then she filed an application for extension of time for leave to appeal which was struck out on 25th May 2018 in Misc. Land Application No. 67 of 2017. Aggrieved by that decision, she filed Miscellaneous Land Application No. 37 of 2018 for review of the ruling in Land Application No. 67 of 2017. The said application was dismissed on 04th December 2019. The applicant then filed another application, that is, Misc. Land Application No. 106 of 2019 which got struck out on 19th March 2020 and has now filed the application at hand. Given all these events and the fact that the notice of appeal to the Court of Appeal ceased to exist on 28th June 2017, Mr. Mbise was of

irregularities were raised. In my view, the illegalities pointed out cannot be left to stand if they really exist. The law prohibits the change of assessors in the course of Tribunal proceedings. See: **Y. S. Chawalla & Co. Ltd v. Dr. Abbas Teherali**, Civil Appeal No. 70 of 2017 (CAT-Tanga-unreported). The law also makes it mandatory for the active participation of Tribunal assessors and for same to be vividly seen in the Tribunal proceedings. The omission in fact has the effect of vitiating the proceedings and judgement of the Tribunal. See: **Tubone Mwambeta** (supra) and **Edina Adam Kibona** (supra).

However, it is not within the mandate of this Court to determine on the irregularities raised. The matter therefore has to be placed before the appellate court for it to deliberate upon. On these bases, I grant the applicant's application for extension of time to file notice of appeal to the Court of Appeal and to file an application for leave to appeal to the Court of Appeal. The applicant is given twenty one (21) days from the date of this ruling to file the notice of appeal and the application for leave to appeal. No orders as to costs.

Dated at Mbeya on this 02nd day of September 2020.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 02nd day of September 2020 in the presence of both parties and their legal counsels.




L. M. MONGELLA
JUDGE