

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**MISC. LAND APPLICATION NO. 48 OF 2020**

(Originating from Moshi District Land and Housing Tribunal  
Application No. 205 of 2016)

**DANLAND TEMU ----- 1<sup>ST</sup> APPLICANT**

**GILBERT NYAMISA ----- 2<sup>ND</sup> APPLICANT**

**VERSUS**

**THOMAS TEMU ----- RESPONDENT**

**RULING**

**MUTUNGI .J.**

The Applicants dully represented by Mr. Charles Mwangani have filed the instant application seeking for the following orders, under **section 41 (2) of the Land Disputes Court Act Cap 216 (R.E. 2019): -**

- (1) That, this honourable court may be pleased to extend time within which to file an appeal out of time against the judgment, and decree from Moshi District Land and Housing Tribunal in Application No. 205 of 2016 dated 21/5/2020.
- (2) That costs of this application abide the event.

(3) Any other order as this honourable court may deem fit and just to grant.

Having adopted the corresponding affidavit to the application, the learned counsel proceeded to submit as hereunder: -

He stated their major reason for the delay was due to the fact that, the Applicant was supplied late with the appeal documents. These were supplied to the Applicant on 28/7/2020 after the decision subject of the intended appeal had been pronounced on 21/5/2020. It was the Applicants' counsels' further submission that, the trial tribunal had alleged the presiding chairman had been transferred to another duty station. In view thereof was not able to proof read and sign the said documents. In conclusion, the counsel prayed that as deposed in the Corresponding Affidavit, the Applicants had accounted for each day of delay.

Be as it may, the decision so sought to be challenged is tainted with illegalities. He cited two illegalities. These being that contrary to **section 23 of the Land Dispute Court Act read together with Regulation 19 (2) of G.N. No. 174/2003**, before a judgment is read out, the Assessors must have their opinions

recorded which are to form part and parcel of the proceedings. To cement his words, he invited the court to the case of **Sikudhani Saidi Magambo and another vs. Mohamed Robale (CAT-Dodoma, Civil Appeal No. 197 of 2018** which was quoted with approval in the case of **General Manager Kiwengwa Stand Hotel vs. Abdallah Said Musa, Civil Appeal No. 13/2020**.

Further that the tribunal is required during a visit to the locus in quo to record all that had transpired and the adverse party be given an opportunity to cross-examine on the same. He prayed that when considering the illegalities, the court be guided by the case of **Principal Secretary of Defence vs. D.P Valambia [1992] TLR 3 & 7**. In the upshot the Applicant's counsel prayed in view of what he had submitted, the application be granted.

On the other side of the coin, Mr. Kilasara representing the Respondent, straight away contested the fact that the Applicant had sought the services of Advocate Ngole who misconducted himself while pursuing their intended appeal. The learned advocate argued that there is no proof whatsoever on this allegation.

As though not enough, it took the Applicants more than 30 days to apply for the first time for appeal documents. Further, the issue of the transfer of the chairman in conduct of the matter does not arise. The record is clear that it was the Successor Chairman who read the decision and the one who dully signed the same.

To put salt to the wound the Applicants have miserably failed to account for each day of delay. To be specific this is from the date of delivery of the decision to the date the Applicants applied for the copies (21.5.2020 to 24.6.2020). A further period from 21.7.2020 when the copies were ready for collection to 30.7.2020 when this application was filed in this court (9 days) have not been accounted for.

The Respondent's counsel contended further that, the raised illegalities have no legs to stand on. He clarified that the opinions of the Assessors were dully recorded and are available in the proceedings which were in fact considered by the Chairman. As to the visit to the locus, the report is available in the tribunal's records and the parties were accorded an opportunity to cross-examine.

It was the Respondent's counsel settled opinion that, the

Applicants have failed to disclose sufficient reasons worth the grant of the application and should in the circumstances be dismissed.

In re-joinder the Applicants' counsel responded that, the evidence that Advocate Ngole had been instructed by the Applicants is the Corresponding Affidavit to this application. The said Advocate had misconducted himself hence the reason the Applicants hired another Advocate.

The Advocate averred further that the dates subject of the delay are the dates after 45 days and not otherwise. In this regard the days subject to be accounted for are from 5/7/2020. The counsel went on to plead to the court to go through the proceedings to find whether the requirements of law had been complied with. In view thereof he once again prayed, that the court should find the Applicants had demonstrated sufficient reasons for extension of time so sought.

On the outset, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It has also become common knowledge that the definition of



sufficient cause is not possible to be laid down. The court has consistently considered factors such as the length of the delay involved, the reason for the delay, the degree of prejudice, if any that each party stands to suffer depending on how the court exercises its discretion and whether there is a point of law sufficient of importance such as the illegality of the decision sought to be challenged. These factors are to be found in the cases of **Dar-es-Salaam City Council vs. Jayantilal .P. Rajani, Civil Application No. 27 of 1987, Tanga Cement Company Limited vs. Jumanne .D. Masangwa** and **Amos .A. Mwalwanda, Civil Application No. 6 of 2001** and **Principal Secretary, Ministry of Defence and National Service vs. Dervram Valambia [1992] TLR 185.**

In this application is common ground as averred in both the Applicants' submission and the Corresponding Affidavit that the delay was caused by the late supply of the requisite documents. It is on record that the decision subject to be challenged was delivered on 21/5/2020 and the first letter applying for the appeal documents was written on 24/6/2020 which was before the expiry of the 45 days of appeal. The appeal period was to expire on 5/7/2020. The record is further very clear through the annexed letters to the Application

dated 3/7/2020 and 14/7/2020 which served as reminders, were still requesting for appeal documents.

It is further on record that the documents were certified on 21/7/2020 which is a clear indication that this is when the same were ready for collection but were supplied on 28/7/2020. The record is all in black and white that, the Applicants knocked at the doors of this court on 30/7/2020 two days after receipt of the appeal documents. For any stretch of imagination, it cannot be said that, the Applicants were sloppy or the delay was inordinate as proposed by the Respondent's counsel. The court is alive that each day of delay should be accounted for and in this case the days of delay have been accounted for. The two days before filing of this application are reasonable and it is a gesture that the Applicants and their Advocate were diligent and fast to act.

The Applicants' counsel has made a contention that there are illegalities in the decision sought to be challenged. I will go by what the Affidavit says. There is nowhere illegality was mentioned hence I find no justification in dealing with this aspect which might have come as an afterthought. I need not discuss more on this.

For the reasons demonstrated in this ruling showing both the Applicants' and their Advocate were diligent and the period of delay was in no way inordinate, I proceed to grant the application. I further order the intended appeal be filed within 21 days of the delivery of this ruling. Each party to bear own costs.



**B. R. MUTUNGI**  
**JUDGE**  
**20/10/2020**

Ruling read this day of 20/10/2020 in presence of 1<sup>st</sup> Applicant, the Respondent and Mr. Martin Kilasara the Respondent's Advocate.

**B. R. MUTUNGI**  
**JUDGE**  
**20/10/2020**

RIGHT OF APPEAL EXPLAINED

**B. R. MUTUNGI**  
**JUDGE**  
**20/10/2020**