

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

MISCELLANEOUS LAND APPLICATION NO. 48 OF 2019

*(From the District Land and Housing Tribunal for Kyela at Kyela Land
Application No. 56 of 2015)*

ENELIA IPOPO.....APPLICANT

VERSUS

EVA KYEJA (Administrator of the

Estate of the Late Monica Bulwilo).....**RESPONDENT**

RULING

Date of Last Order: 05/08/2020
Date of Ruling : 07/10/2020

MONGELLA, J.

The applicant is seeking before this court for extension of time within which to file an appeal out of time against the decision of the District Land and Housing for Kyela at Kyela. The decision was handed down on 05th October 2017 in Land Application No. 56 of 2015. Both parties appeared in person and the application was argued by written submissions.

In her affidavit in support of the application as well as in her submission in chief, the applicant advanced two main reasons for seeking extension of time. First, that there was delay in obtaining copies of judgment from the Tribunal. She submitted that after the judgment was pronounced on 05th

October 2017, she wrote a letter requesting for copies of the judgment, but the same were availed to her on 23rd March 2018. She then filed an appeal on 27th March 2018, but the same was struck out for being time barred. Second, the applicant stated that there is an illegality on the impugned decision to the effect that the opinion of assessors was not obtained.

On her side, the respondent opposed the application. She contended that this application has been filed in this court in this year, 2020 whereby two years had expired after the expiry of the time limit of 45 days and thus should not be entertained. Citing the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (CAT at Arusha, unreported) she argued that for an application of this nature to be granted, the following has to be ascertained: *"the applicant must account for all the period of delay, the delay should not be in-ordinate, the applicant must show diligence not apathy, negligence or sloppiness in the prosecution of the action he intends to pursue; and that if the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged."*

The respondent challenged the reason of delay in issuing copies of judgment advanced by the applicant saying that it is insufficient as she ought to have perused the court file to ascertain if the copies were ready for collection. She contended that as much as copies of judgment and proceedings are vital in preparation of sound memorandum of appeal, the applicant should have prepared the memorandum of appeal and

thereafter pray to amend the same after obtaining the copy of judgment and decree.

She further challenged the illegality raised by the applicant in her affidavit to the effect that the matter was res judicata. On this she contended that the issue is an afterthought at this stage as the applicant ought to have raised the same at the Tribunal on hearing of the appeal.

I have considered the arguments by the parties and I wish to start with the issue of illegality. It appears that the respondent forgot that the paragraph in the affidavit in support of the application that raised the issue of res judicata was expunged following the preliminary objection she raised to the effect that the paragraph was argumentative. I therefore shall not discuss this illegality, but another illegality which the applicant raised relating to the involvement of assessors. Among the reasons that may constitute sufficient reason to be awarded extension of time is the existence of illegality in the impugned decision. This has been decided in a number of cases from this Court and the Court of Appeal. For instance in **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) 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 has been given by the applicant..."



The illegality raised by the applicant to the effect that the Tribunal assessors' opinion was not obtained meets the criteria set in the case of **Ngao Godwin Losero** (supra) cited by the respondent. It is of sufficient importance and apparent on the face of record. This is because it is a mandatory requirement of the law that Tribunal assessors must be fully involved and their opinion filed in the Tribunal and read before the parties before a judgment is composed. Failure to do that vitiates the proceedings and judgment of the Tribunal. See: **Ameir Mbarak & Azania Bank Corporation Ltd v. Edgar Kahwili**, Civil Appeal No. 154 of 2015 (CAT, unreported).

As decided in the case of **VIP Engineering and Marketing Limited** (supra), the presence of illegality suffices to grant extension of time regardless of whether the applicant has advanced other sufficient reasons. Therefore, in consideration of the illegality raised by the applicant, I proceed to grant her the extension of time as prayed. The applicant shall file her appeal in this Court within 45 days from the date of this ruling. Each party to bear her own costs of the suit.

Dated at Mbeya on this 07th day of October 2020


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 07th day of October 2020 in the presence of both parties appearing in person.




L. M. MONGELLA
JUDGE