

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT SONGEA**

**MISCELENEOUS LAND CASE APPEAL NO 13/2019**

**(From the District land and Housing Tribunal of Mbinga at Mbinga  
Miscellaneous Land Application No. 11/2019 and Original Ward Tribunal of  
Luhuwiko Ward in Application No. 36/2018)**

**LEA KOMBA ..... APPLICANT**

**VERSUS**

**MARIA MAPUNDA..... RESPONDENT**

**JUDGEMENT**

**Date of Last Order: 20/10/2020**

**Date of Judgment: 24/11/2020**

**BEFORE: S.C. MOSHI, J.:**

In the District Land and Housing Tribunal of Mbinga at Mbinga, the appellant filed an application to file an appeal out of time. She said that she delayed due to the fact that she was frustrated with the death of her husband and was suffering from blood pressure as a result of her husband death; hence she couldn't file her appeal in time. The Tribunal ruled out that the appellant didn't advance sufficient reasons for the delay to file an appeal and dismissed the same, hence this appeal.

In her memorandum of appeal the appellant has advanced two grounds of appeal namely: -

- 1. That the trial Tribunal erred in law and fact for not granting appellant leave to appeal out of time while the appellant's application has merit and Land Application No. 36 of 2018 of Luhuwiko Ward Tribunal was tainted with illegality hence appellant has great chance of success in the intended appeal if granted by this court.*
- 2. That, the trial tribunal has erred in law and facts for disregarding appellant's evidence and proceeded to dismiss the application while the appellant has succeed to advance his sufficient cause through his affidavit.*

This appeal was argued by way of written submission. The appellant was represented by Mr. Alex Dominicus Nyoni, advocate while the respondent enjoyed the services of Mr. Innocent Mbunda, advocate.

The appellant's counsel submitting on the first ground stated that, it is accepted principle that plea of illegality is a good ground for the court to grant extension of time, failure of the court to grant extension of time is likely to bless illegality to live in the face of courts' record. He cited the case of **Etienes Hotel vs. National Housing Corporation** , Civil

Reference No. 32 of 2005 Court of Appeal sitting at Dar es salaam (Unreported).

He argued that in Land Application No. 36 of 2019 of Luhuwiko Ward Tribunal the issue of illegality can be seen in two circumstances; first the respondent had no locus standi to institute a suit against appellant. The record of Luhuwiko Ward Tribunal shows that the respondent testified that the suit land belongs to her deceased mother one Suzan Mapunda, but she never produced evidence that she was appointed as the administratrix of the deceased mother or if she was appointed as a recognized agent to institute a case against the respondent. Even at paragraph 3 of the Ward Tribunal Judgment, the trial tribunal advised the parties to follow the procedures in appointing the administrator of the deceased's person and at the same time it ruled out that the suit land belongs to the family of Susan Mapunda. That was wrong as the tribunal was supposed to strike it out waiting for the administrator of the deceased person to be appointed.

Secondly, he said that the trial Tribunal had no jurisdiction. The question of jurisdiction is vital and it is a basis on which a case can be built upon and can be raised at any stage of the suit even in appeal. He made reference to section 15 of the Land Disputes Courts Act, which provides for



the pecuniary jurisdiction of the Ward Tribunal to be T.shs. three million. He said that, the disputed land in the case at hand is located within Mbinga Urban area, although it is not measured its value is estimated to be six million which exceed the pecuniary jurisdiction of the trial tribunal hence the trial tribunal had no jurisdiction to try the same. He argued that the absence of jurisdiction not only affects the merit of the case but affects the whole process of dispensing justice. He made reference to the case of **Jesca O. Sangana and Oresta O. Sangana versus Hamza Kakal and 2 others** , Land Case Appeal No. 7 of 2011 High court at Songea (Unreported), **Kalunga and Company Advocates versus National Bank of Commerce Ltd** (2006) TLR 235, **The Principal Secretary Ministry of Defence and National Services versus Devram Vallambia** (1991) TLR 384 **Finca (T) Ltd and Kipondogoro Auction Mart Vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, Court of Appeal Tanzania at Iringa (Unreported).

On the second ground of appeal he argued that, the law requires that reasons for delay to appeal out of time should be reflected and or provided in the affidavit not in submission since submission is not evidence. He cited the case of **The registered Trustees of Archdioceses of Dar es**

**Salaam versus The chairman of Bunju Village Council**, Civil Appeal No. 147 of 2006 Court of Appeal sitting at Dar es salaam(Unreported). He said that the chairman of the District Land and Housing Tribunal did not look at the appellant's affidavit, if he did so he could have seen the sufficient cause being illegality as a ground of applying for extension of time.

In reply Mr. Mbunda submitted that the tribunal was right to dismiss the application as it did as the appellant did not advance sufficient and good cause for it to enlarge time within which to file an appeal out of time. He said that, he is aware that the categories of sufficient or reasonable cause are never closed, each case is determined according to its facts and surrounding circumstances. He cited the cases of **Martha Daudi Vs Peter Thomas Nko** (1992) TLR 358, and **RajabuKadimwaNg'eni and Another Vs Idd Adam**(1991) TLR 38.

He argued that the Tribunal was not invited to check the irregularity which were committed by the trial tribunal, what was pleaded in the affidavit of the appellant was sickness and frustrations due to death of the appellant's husband.

He also said that, the Ward Tribunal did not decide the Land Application before it rather it advised the parties to pursue a probate cause before the competent court, in case of any omission then the appellant ought to have stated to what extent the omission has occasioned failure of justice. He said that otherwise section 45 of the Land Disputes Courts Act, No.2 of 2002 cures such omission.

He supported the decision of the tribunal and buttressed his argument with the case **Benedicto S.B Mahela versus Tanzania Beaural of Standards**, Miscellaneous Application Number 632 of 2019 High Court of Tanzania at Dar es salaam where the court quoted with approval the decision in the case of **Lyamuya Construction Co. Ltd Vs Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application Number 2 of 2010 (Unreported), where it was held that:-

*"as a matter of general principle, it is discretion of the court to grant extension of time. But that discretion is judicial and so it must be exercised according to the rules of reason and justice and not according to the private opinion or arbitrary. On the authorities however, the following guidelines may be formulated;*



- (a) The applicant has to count for all period of delay.*
- (b) The delay should be inordinate.*

I have gone through the District Land and Housing Tribunal records, the affidavit, counter affidavit and the written submissions by the parties. The issue to be determined is whether this appeal has merits. As pointed out earlier the trial Tribunal held that the applicant failed to advance sufficient reasons to warrant extension of time for her to file an appeal out of time prescribed by the law for reasons that the appellant had failed to attach the medical chits, and she had failed to account for the period of five months since the Ward tribunal decision was delivered on 29/11/2018 and the application for extension of time in District Land and Housing Tribunal was made on 14/4/2019.

However, upon scrutiny of the records I am of the view that the appellant was able to advance sufficient reasons especially on the issue of illegality. Looking at the affidavit of the appellant at the District Land and Housing Tribunal and the submission made by the appellant's counsel at District Land and Housing Tribunal, the illegality is pointed out as a reason for seeking extension of time though in brief. See paragraph 12 of the affidavit filed at the District Land and Housing Tribunal, it reads thus:-

*"12. that it is for the interest of justice the application in chambers be granted as it stands great chances of success as the judgement and proceeding of Luhuwiko Ward Tribunal tainted by a lot of irregularities including lack of jurisdiction and respondent has no locus stand over the matter".*

Also, the oral submission which was made by Advocate Jovin Komba at District Land and Housing Tribunal indicates "illegalities" as a ground for seeking extension of time. It reads: -

*"Proceeding and judgment of the ward tribunal is tainted with irregularities"*

The irregularities which were pointed out involve issues of jurisdiction of the Ward tribunal and locus standi of the respondent. There is a string of authorities which requires that where the issue of illegality is alleged, the court has a duty to ascertain the point. In the case of the **Principal Secretary Ministry of Defence and National Service Vs DevramValambia** (1993) TLR 387, It was held thus: -

*"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 straight."*

Similarly, in the case of **VIP Engineering and Marketing Limited and Two others Vs Citi Bank Tanzania Limited**, Consolidated Civil Reference No. 6,7,8 of 2006 CAT (unreported) it was held thus:-

*"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 now rule 9 of the court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay."*

The same position was reached in the case of **TanESCO vs Mufungo Leonard Majura and 15 others**, Civil Application No. 94 of 2016 (Unreported), where it was stated that: -

*"Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, there is a complaint of illegality in the decision intended to be impugned ....suffices to move the court to grant extension of times so that the alleged can be addressed by the court".*

Applying the above principle to the appeal under consideration, I have been persuaded by what has been stated by the appellant on the alleged illegality in the Ward tribunal's decision, the irregularity is apparent on the face of record and thus can be discerned as good cause for the District Land and Housing Tribunal to allow the appellant to file an appeal out of time. In the event, this appeal is allowed with costs.

The appellant should file the intended appeal in the District Land and Housing Tribunal within 45 days from the date of ruling.

Right of appeal explained.

 **S.C. MOSHI**  
**JUDGE**  
**24/11/2020.**