

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

MISC. LAND APPLICATION NO. 34 OF 2020.

**(Arising from Application No. 179 of 2016, in the District Land and
Housing Tribunal for Mbeya, at Mbeya).**

**MARAN-ATHA ENGINEERING AND
TRADING CO. LTD.....APPLICANT**

VERSUS

TANZANIA POSTAL BANK (MBEYA BRANCH).....RESPONDENT

RULING

01/10 & 15/12/2020.

UTAMWA, J:

The applicant in this application, MARAN-ATHA ENGINEERING AND TRADING CO. LTD moved this court for extension of time to file an appeal out of time against the judgement date 18th July, 2018 (impugned judgment) of the District Land and Housing Tribunal of Mbeya, at Mbeya (the DLHT) The impugned judgement was made in Application No. 179 of 2016. She also prayed for costs of the application.

The application was made by way of chamber summons supported by an affidavit sworn by one Ambonisye Mbiliwe Mwandembo, the principal officer of the applicant. It was preferred under section 41 (2) of the Land Disputes Courts Act, Cap. 216 R. E. 2019 as amended by Act No. 2 of 2016. The respondent, TANZANIA POSTAL BANK (MBEYA BRANCH) objected the application through a counter affidavit sworn by one Mr. Simon W. Mlelwa, the principal officer of the respondent bank.

The application was argued by way of written submissions. The applicant was represented by Mr. Ladislaus Rwekaza, learned counsel. On the other side, the respondent was represented by Mr. Emmanuel G. Mwakyembe, learned advocate.

The affidavit supporting the application essentially stated as follows; that, the applicant was an applicant before the DLHT. She had sued the respondent for a piece of land. She lost the case to the respondent vide the impugned judgment. She then timely appealed to this court and her appeal was registered as Land Appeal No. 56 of 2018 (henceforth the appeal). However, on 23rd April, 2020 this court (Hon. Dr. Mongella, J.) struck out the appeal on technical grounds. Upon the appeal being struck out, the applicant found herself time-barred from filing a fresh appeal, hence this application. The delay was thus, occasioned when she was prosecuting the appeal. Furthermore, the impugned judgement contains illegalities and irregularities that attract the intervention of this court for interests of justice.

The respondent's counter affidavit, did not dispute a good number of the facts deposed into the affidavit. It however, refuted the fact that the

appeal had been filed timely. It further maintained that the delay was caused by the applicant's negligence. It also refuted the fact that the delay was due to the fact that the applicant was prosecuting the appeal. The counter affidavit also disputed the fact that the impugned judgment contains illegalities and irregularities. It thus, showed that there is no justifiable reasons for granting the present application.

In his written submissions supporting the application, the learned counsel for the applicant adopted the contents of the affidavit supporting the application. He further contended that; the appeal was struck out since the 45 days prescribed by the law had lapsed before the appeal was filed. The law requires an applicant for an extension of time to adduce sufficient reasons before the same is granted. He supported this legal stance by citing the case of **Finca (T) Ltd and another v. Boniface Mwalukisa, Civil Application no. 589/12 of 2018, Court of Appeal of Tanzania (the CAT), at Iringa** (unreported). The applicant's counsel further argued that, in the matter at hand, the applicant promptly filed this application upon the appeal being struck out on the technical point.

The learned counsel for the applicant also submitted that, the factors to be considered by the court in an application of this nature include the length of the delay, the reasons for the delay and the degree of prejudice to the respondent if the application is granted. He cemented this point by the decision in **Salim Lakhani and 2 others v. Ishfaq Shabir Yusufali, Civil Application No 455 of 2019, CAT at Dar es Salaam** (unreported). In the matter at hand, the delay was due to the fact that the applicant was prosecuting the appeal that was ultimately struck out. The respondent will

not also be prejudiced if the time will be extended as prayed. All these constitute a sufficient reasons for this court to grant the application at hand.

Moreover, the applicant's counsel argued that, the intended appeal also has overwhelming chances of success for the illegalities committed by the DLHT. The illegalities included the failure by the chairman to give the assessors an opportunity to give out their opinion in the presence of the parties.

In his replying submissions, the learned counsel for the respondent submitted that, the delay was caused by the applicant's negligence for filing the incompetent appeal that was later struck out. Again, the appeal was struck out on the 23rd April, 2020, but the application at hand was filed in this court on 6th May, 2020 which was two weeks from the date when the appeal was struck out. The applicant did not however, account for each day of the delay as required by the law, though in law a delay of even a single day has to be accounted for. He cited the case of **Bruno Wenceslaus Nyalifa v. The Permanent Secretary of Home Affairs and the Honourable Attorney General, Civil Appeal No. 82 of 2017, CAT at Arusha** (unreported) to cement the point. He thus, argued that, the failure by the applicant to account for the delay in filing this application promptly upon the appeal being struck out, does not constitute any sufficient reason. The respondent's counsel distinguished the **Salim case** (supra) cited by the applicant's counsel on the ground that, in that case, the applicant had accounted for each date of delay by showing that the dates fall on the weekend.

The respondent's counsel also submitted that, the applicant did not establish any illegality. The case of **Principle Secretary, Ministry of Defence and National Service v. Evram Valambhia [1992] TLR. 182** pointed that, where a point of illegality is alleged, it must be established to form a good reason for extending time. He thus, concluded that, the applicant did not adduce any sufficient reason for granting this application. The court should thus, remind itself on the principle that court proceedings should come to an end and the law must be observed.

In his rejoinder submissions, the learned counsel for the applicant basically reiterated his submissions in chief. He added that, since the delay in the matter at hand was due to the prosecution of the appeal that was struck out, then the delay was what is commonly known as a technical delay. This kind of delay is excusable in law. He backed up this contention by the case of **Victor Rweyemamu Binamungu v. Geopfrey Kabaka and another, Civil application No. 602/08 of 2017, CAT, at Mwanza** (unreported). He further argued that, it is the law that, where an issue of illegality in a decision sought to be impugned is raised, the court is required to extend the time even if it means that the applicant has failed to account for the delay; he cemented the point by the case of **Kanisa la Pendecoste Mbeya v. Lamson Sikazwe and 4 others, Civil Application No. 191/06 of 2019, CAT, at Mbeya** (unreported).

I have considered the arguments by both sides, the record and the law. Indeed, I agree with the parties that, since this is an application for extension of time, it must be governed by the law on extension of time. This law guides, among other things, that, for an application for extension of time

to be granted, an applicant must adduce good cause or sufficient reasons; see the decision by the CAT in the case of **Mumello v. Bank of Tanzania [2006] 1 EA 227** and many others. It is also the law that, extension of time is granted at the discretion of the court, which said discretion is exercised judiciously.

The issue in the matter at hand is thus, *whether or not the applicant in the case at hand has adduced good cause for granting this application*. The applicant has basically founded his application on two reasons. The first is related to technical delay. The second reason is that, the impugned judgment was vitiated by illegalities. I will thus, for the sake of convenience, firstly test the point on illegality, and if need will arise I will also consider the aspect of technical delay.

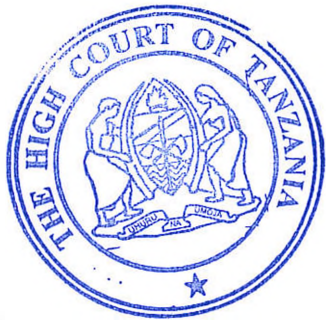
Regarding the allegation on illegality, I agree with both parties that, in law, a point of illegality constitutes a good cause for extending time so that the illegality can be cured. Nonetheless, the same law guides that, not every allegation of illegality will constitute a sufficient reason for extending time. It follows thus, that, for an allegation of illegality to constitute a sufficient reason it will depend much on the circumstances of each case as guided by the CAT in the **Tanzania Harbour Authority v. Mohamed R. Mohamed [2003] TLR. 76**. In the matter at hand, the illegality complained of by the applicant is the failure by the chairman of the DLHT to give the assessors an opportunity to give out their opinion in the presence of the parties. The respondent disputes the existence of this irregularity.

The sub-issue to be determined by this court at this juncture is thus, whether or not the applicant has established the illegality at issue. The answer to this question is available in the record of the DLHT. The court is entitled to rely upon this record simply because, the law is trite that, court records are presumed to be serious and genuine documents that cannot be easily impeached, unless there is evidence to the contrary; see the case of **Halfani Sudi v. Abieza Chichili, [1998] TLR. 527**. However, in the matter at hand, there is no scintilla of evidence challenging the record of the DLHT. It is clear in that record that, upon the completion of the trial on 17/05/2018, the chairman of the DLHT fixed a date for the judgment (see page 23 of the typed version of the proceedings) without requiring the assessors sitting with him to give their opinion. There is also no sign that the opinion of the assessors were recorded in the proceedings and read to the parties in court though in fact, the opinion were referred to by the chairman in the impugned judgment.

The course taken by the chairman of the DLHT just demonstrated above, offended the mandatory provisions of section 23 (2) of Cap. 216 regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 as construed by the CAT in the cases of **Edina Adam Kibona v. Absolom Swebe, Civil Appeal No. 286 of 2017, CAT, at Mbeya** (unreported) and **Tubone Mwembeta v. Mbey City Council, Civil Appeal No. 287** (unreported). The CAT in these precedents held that, such violation is fatal to the proceedings and judgment of the DLHT.

Owing to the reasons shown above, I answer the sub-issue posed herein above affirmatively that, the applicant has established the illegality at

issue. I also answer the major issue affirmatively that, the applicant in the case at hand has adduced good cause for granting this application. This finding is forceful enough to dispose of the entire application. It thus, makes it unnecessary to test the other reason on the aspect of technical delay, otherwise I will be performing a superfluous and academic exercise which is not the primary objective of the process of adjudication. I therefore, find merits in this application and I grant it. The applicant shall file the appeal within 45 days from the date hereof. Each party shall bear his own costs. This is because, it was the DLHT which committed the illegalities that have constituted a good cause for granting the application. It is so ordered.




JHK. UTAMWA.
JUDGE

15/12/2020.

15/12/2020.


CORAM; Hon. N. Mwakatobe, DR.

Appellant: present and Mr. Dickson Mbilu, advocate.

Respondent: absent.

BC; Mr. Patrick, RMA.

Court: ruling is delivered this 15th December, 2020 in the presence of the applicant and his advocate, Mr. Dickson Mbilu, and in the absence of the respondent. Right to appeal is explained.


N. MWAKATOBÉ
DEPUTY REGISTRAR
15/12/2020.