

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**MISC LAND APPLICATION NO. 66 OF 2020**

(C/F Land Application No. 75/2017 of the District Land  
and Housing Tribunal of Moshi at Moshi)

**MWANAKIMU J. SWAI.....1<sup>ST</sup> APPLICANT**

**NICHOLAUS P. CHUWA..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**HASHIMU J. SWAI..... RESPONDENT**

**RULING**

**MUTUNGI .J.**

The applicants pursuant to section **14(1) of the Law of Limitation Act** are applying for extension of time to appeal against the decision of District Land and Housing Tribunal of Moshi (trial tribunal) before Hon. T. J. Wagine- Chairman in Land Application No. 75 of 2017 which was delivered on 23<sup>rd</sup> December, 2019. The Application is supported by an affidavit sworn by the 1<sup>st</sup> applicant which was countered by the respondent's counter affidavit. The parties herein

consented for the application to proceed by way of written submissions. The applicants are not represented whereas the Respondent was represented by Mr. Elia Kiwia learned advocate.

In support of the application, the first Applicant submitted, she was aggrieved by the judgement which was delivered on 6<sup>th</sup> January 2020 and she consequently filed a notice of appeal. Thereafter sought for the copy of judgement, proceedings and decree which were supplied to her on 16<sup>th</sup> September, 2020 while the time to appeal had already expired. Further, after she had obtained the necessary copies, she started the process of looking for legal aid in preparation of this application.

The Applicant further submitted, the judgement which is subject of the intended appeal was illegal and erroneous. She was sued in her personal capacity instead of being sued as a personal representative of the late Juma Membi Swai. In view thereof the judgment need to be corrected by this court. She concluded, for the interest of justice, the court does allow the application.

Disputing the application, Mr. Kiwia strongly submitted, the first Applicant has no sufficient reason to warrant her to file the appeal out of time. The counsel further stated the

guiding principles for extension of time are generally accounting for each day of delay, the delay should not be inordinate, illegality, diligence and such extension is within the discretion of the court. He cited the cases of **Lyamuya Construction Company Limited Vs Board of Registered Trustees of YWCA Tanzania, Civil Application No. 2 of 2010 (unreported)**, **Zuberi Nassor Moh'd vs Mkurugenzi Mkuu Shirika la Bandari Zanzibar, Civil Application No. 95/15 of 2018** which quoted the cases of **Samwel Sichome vs Bulebe Hamisi, Civil Application No. 8 of 2015** and **Henry Myaga vs TTCL Civil Application No. 8 of 2015** in support thereof.

Contesting the reason of late supply with records of appeal, Mr Kiwia admitted the judgment subject to be challenged was delivered on 6/1/2020 but all the requisite documents were certified on 25/3/2020. The respondent was issued with the same on 25/3/2020, after payment of the fees vide receipt No. 920085000020865 (Annexure R1). It is thus obvious the applicant negligently decided not to take any steps despite the alleged documents having been promptly prepared and issued by the tribunal.

Mr. Kiwia added after delivery of judgement instead of pursuing the intended appeal, she filed a review in the

same Tribunal which was dismissed for being time barred. These facts are not reflected in the Applicant's affidavit nor in her submission, calculated to deceive this court. Since her Affidavit does not disclose the truth it cannot be acted upon. The counsel cited the case of **Robert .S. Lova & Another vs Ministry of resources and Tourism & Another, Labour Revision No. 742 of 2018**, which cited the case of **Ignazio Messina vs Willow Investment SPRL, Civil Application No. 21 of 2001** and the case of **Ste BP'S (cote-D' Ivore-D Ivoire) SA LTD vs Ghuba Holdings (T) Limited, Commercial Case No. 70 of 2004** to support his stance.

He concluded once the applicant has lied on the important facts, should not be believed at all. He cemented the point by citing the case of **Zakaria Jackson Magayo vs The Republic, Court of Appeal of Tanzania at Dar es Salaam**. The court in the given circumstances should proceed to strike out the Affidavit and leave the application with no legs.

It was Mr. Kiwia's further argument, though the Applicant was not represented but she enjoyed legal assistance of Advocate Sandi and Advocate Gideon Mushi who assisted her in filing the review. Even though, the Applicant has failed to account for 70 days from the time when the

review was dismissed on 23<sup>rd</sup> July 2020 until when she filed this application on 8<sup>th</sup> October 2020.

He further faulted the Applicant for failure to tell the court that, she had legal assistance and the names of those who assisted her. She had totally failed to account for 18 days from 19<sup>th</sup> September 2020 when she allegedly obtained the documents to 8<sup>th</sup> October 2020 when this application was admitted by the Deputy Registrar.

Mr. Kiwia further challenged the reason on illegality where he contended, the same must be on the face of record and not to be discovered by a long argument. He cited the case of **Serengeti Breweries Limited vs Hector Sequeiraa Civil Application No. 374/18/2018** and opined, the Applicant failed to establish the alleged illegality. The disputed three acres were to be divided equally between the 1<sup>st</sup> Applicant and Respondent which were allocated to them before the demise of their father. This piece of evidence was not challenged by the respondent's witness and accordingly supported by the evidence of PW1 and PW4. Exhibit P1 the judgement from the Primary Court of Siha which appointed the 1<sup>st</sup> Applicant as administrator, stated categorically that the late Juma Membi during his

lifetime had distributed all his properties. He concluded that the raised illegality was baseless.

Be as it may the learned advocate submitted, the 1<sup>st</sup> Applicant had no chances of succeeding in the intended appeal if extension is granted. Conclusively, the learned advocate prayed for the dismissal of the Application with cost.

In rejoinder the first Applicant reiterated her reasons for delay to file an appeal on time as stated in her affidavit as well as in her submission. She added, had not lied in the affidavit but has given the true facts. She further reiterated her prayers thereto.

Having considered the parties' affidavits and their respective submissions, the main issue for determination is ***whether the applicant has advanced sufficient cause to be granted extension of time.***

It is now settled general knowledge in granting extension of time, the court will consider if there are sufficient reasons for the delay. Although the term sufficient cause has not been defined but there are certain steps if taken can reflect seriousness in ones actions. There are numerous cases which provide for the factors to be considered

before granting extension of time to appeal. Among these are **Glory Shifwaya Samson vs Raphael James Mwinuka, Civil Application No 506/17 of 2019, International Airline of the United Arab Emirates vs Nassor Nassor Civil Application No. 569/01 of 2019, CAT-Arusha (unreported), Mohamed Hassan Hole vs Keya Jumanne Ramadhan (CAT-Dodoma, Civil Appeal No.19/1992) Unreported** together with those cited by the Respondent's counsel.

The Court of Appeal basically noted, for extension of time to be granted the applicant must account for all the period of delay, the delay should not be inordinate and the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he/she intends to take, and Illegality of the decision. Again, in the case of **Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi Vs The Registered Trustees of the Catholic Church of Sumbawanga Diocese, Civil Appeal No. 64 of 2007, CAT at DSM** it was held: -

*"In computation of the time period of appeal the time spent to obtain a copy of judgment and decree should be excluded"*

I have keenly considered the Corresponding Affidavit as well as the applicant's submission and noted, the material

which the applicant wants this court to rely on in extending time are two fold, **first** delay to be supplied with copies of appeal documents and **two**, the issue of illegality.

Regarding the late supply of copies of judgment, the Applicant stated the judgment was delivered on 6/1/2020 and she obtained the copies on 16/ 09/2020 when she started looking for legal assistance. This reason was strongly disputed by Mr. Kiwia on the ground that the copies were ready for collection on 25/3/2020 and the Applicant did not take steps to collect the same. This is evidenced by Annexure "R1" which was accordingly supplied to the respondent.

It is undisputed that the judgment was delivered on 6/1/2020 and the records reveals that the copy of judgment and proceedings were ready for collection by 25/03/2020 as per Annexure R1. From 25/03/2020 to 8/10/2020 is about six months of which the Applicant has failed to account for.

The respondent advocate introduced the issue of review which the Applicant concealed. It seems the Applicant was prosecuting the application for review which was dismissed on 23/07/2020 for being time barred. Even if I assume that was the reason for delay still from 23/07/2020



to 8/10/2020 is about 76 days which the Applicant has failed to account for.

From these findings, it suffices to conclude the Applicant has failed to account for all the period of delay and the delay was in the circumstances inordinate. There was a clear element of negligence and sloppiness.

Coming to the second issue on illegality, it must be apparent on the face of record. In the case of **Mega Builders Limited vs D.P.I Simba Limited, Civil Application No. 319/16 of 2020 CAT at Dar es Salaam, page 9** the court of held: -

*"Much as it can be appreciated that illegality is one of factors to be considered as good cause, the same is not an automatic right. For illegality to be considered as a good cause for extension of time, it must be apparent on the face of record."*

The noted illegality is that, the Applicant was sued in her personal capacity and not as a legal representative of the late Juma Membi. The reason was strongly disputed by the Mr. Kiwia on the ground, the late Juma Membi had already distributed his estate before his death as stated in Exhibit P1

(the judgment of Siha Primary Court) which appointed the 1<sup>st</sup> Applicant as the administrator. For any stretch of imagination the noted illegality has to be concluded by a long argument by the parties and is not on the face of record. From this point I am of a considered view that the alleged illegality doesn't suffice to extend time to appeal.

In view of the foregoing analysis, I find no merit in the application and the court proceeds to dismiss the application. Since the 1<sup>st</sup> Applicant and Respondent are relatives, each party is to bear own costs.

It is so ordered.

  
**B. R. MUTUNGI**

**JUDGE**

**12/8/2021**


Ruling read this day of 12/8/2021 in presence of the 1<sup>st</sup> Applicant and Mr. Tumaini Materu holding brief for Mr. Kiwia for the Respondent.

  
**B. R. MUTUNGI**

**JUDGE**

**12/8/2021**

RIGHT OF APPEAL EXPLAINED.

  
**B. R. MUTUNGI**  
**JUDGE**  
**12/8/2021**