

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOBIA DISTRICT REGISTRY)**

AT BUKOBIA

MISC. LAND CASE APPLICATION No. 89 OF 2020

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 69 of 2019)

FREDRICK RWEMANYIRA ----- APPLICANT

[The Administrator of the Estate of
Wenceslaus Nayamukama]

Versus

JOSEPH RWEGOSHORA ----- RESPONDENT

RULING

26/02/2021 & 26/02/2021

Mtulya, J.:

Mr. Fredrick Rwemanyira (the Applicant) was dissatisfied with the decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in the **Land Application No. 69 of 2019** (the Application) delivered on 14th November 2019. The Applicant was interested in filing an appeal before this court, but he found himself out of the statutory time to file the appeal. Being aware of the law in extension of time, he registered this Application on 29th January 2020 seeking enlargement of time to file an appeal out of time in this court.

When the Application was scheduled for hearing today morning, the Applicant invited the legal services of learned counsel Mr. Ali

Chamani to argue the Application on his behalf whereas Mr. Joseph Rwegoshora hired the legal services of learned counsel Ms. Pilly Hussein. It was fortunate that both learned counsels are well aware of the laws regulating extension of time in the precedents of our superior court in **Kapapa Kumpindi v. The Plant Manager, Tanzania Breweries Limited**, Civil Application No. 6 of 2010 and **Safina Amri v. George Ruhinda**, Misc. Land Application No. 66 of 2018.

The requirement of the law in the cited precedents is that applicants for extension of time must provide sufficient reason (s) to persuade this court to grant the application in their favour. The dual learned counsels are also well aware that there is no established pigeon holes of sufficient cause. According to the words of our superior court, good or sufficient cause cannot be laid down by any hard and fast rules. It depends upon a party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion in his favour [see: **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010; **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **Sebastian Ndaula v. Grace Rwamafa**, Civil

Application No. 4 of 2014; and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009].

In order to abide with the cited precedents, Mr. Chamani has produced three (3) reasons for the Applicant's delay in order to move this court to decide in his favor, namely: delay in getting the necessary documents; delay in search of learned counsel; and illegality. In his submission he briefly stated that the first two reasons are well explained in the Applicant's Affidavit and no need to detain this court on the subject. With illegality Mr. Chamani contended that the decision of the Tribunal in the Application was tainted with illegality which cannot be allowed to remain in record. To substantiate his argument, Mr. Chamani argued that the decision of the Tribunal was reached without involvement of the assessors contrary to the law in section 23 and 24 of the **Land Disputes Courts Act** [Cap. 216 R.E 2019] (the Act). According to Mr. Chamani the word decision as is provided in interpretation part of the Act includes judgment, finding or ruling.

This submission was protested by Ms. Hussein contending that the Applicant did not account on every day of delay as per precedent of the Court of Appeal in **Ramadhani J. Kihwani v. TAZARA**, Civil Application No. 401/18 of 2018 where at 9, their Lordships stated that delay of even

a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.

Ms. Hussein also argued that the Applicant has registered a lot of allegations in his Affidavit, and particularly in paragraphs 4, 5, 6, 7 and 9, in which the Applicant mentions several persons and reasons as part of the causes of delay, but no affidavits of the said persons were attached or date of consultations were displayed in the Application. On illegality, Ms. Hussein contended that it is not necessary for every decision of the Tribunal to invite assessors to give opinions. According to her, points of preliminary objection raised in the Tribunal may be resolved by the Chairman himself, without consultation of assessors.

To justify her argument, Ms. Hussein cited the authority of the law in section 23 and 24 of the Act arguing that they were drafted by use of the word judgment and avoided the words finding or ruling. To Ms. Hussein, the Application delivered was a Ruling and not Judgment. To bolster her argument further, Ms. Hussein, cited the provision of Regulations 19 (2) and 22 of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003**

(the Regulations) contending that in preliminary hearing or decisions, the Chairman is not bound to invite assessors for opinions.

In a brief rejoinder, Mr. Chamani submitted that the authority in Regulations 19 (2) and 22 of the Regulations are cited in subsidiary legislation which acquired their authority from the parent Act, and therefore cannot override the authority of section 23 and 24 of the Act. Mr. Chamani stated further that when there is a point of illegality raised, the question on accountability of each day of delay cannot arise. According to him, court of law cannot close its eyes in a glaring illegality when it has all options of rectifying the record through extension of time to the Applicant.

During the hearing of this Application, this court had invited learned counsels to provide any precedent on interpretation of the law in section 23 (2), 24 of the Act and Regulations 19 (2) of the Regulations in order to assist this court in reaching its decision. However, both counsels failed to adduce any precedent. To my opinion, considering the submissions registered by the learned counsels, which had produced different interpretations of section 23(2) and 24 of the Act, this court may grant the Applicant enlargement of time to lodge an appeal so that precedent is set in this court. I think any enactment of

the law which does not receive interpretation of the court is a dead law. I also think certain situations which seek proper interpretation of the law or where there are conflicting precedents, this court may consider them to be part of the good causes in enlargement of time to file an appeal.

In any case, my memory tells me that when a point of illegality is raised, courts of law may enlarge time for filing an appeal. In 1992, our superior court in the precedent of **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] TLR 185, had faced with similar situation like the present one and observed that:

*Indeed the refusal by the Court to extend time amounted to allowing the decision being challenged to remain on record and to be enforced... **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 right.***

(Emphasis supplied)

This precedent was followed by a bundle of precedents in the same court [see: **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009]. The thinking of our superior court in 1992 has been adjusted in 2016 in the precedent of **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016, where it was stated that a claim of illegality of the challenged decision constitutes good cause even if no reasonable explanation has been adduced by the applicant on requirement of accountability of each day of delay. The text from the Court is to the effect that:

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

(Emphasis supplied).

In my opinion, I think, this court cannot close its eyes on either glaring illegality or different interpretations of the law to remain in

record. This court has a duty of ensuring proper interpretation and application of the law by the subordinate courts.

Having said so, and considering the need of intervention by the courts of record in this dispute, the Applicant has persuaded this court to decide in his favour. Therefore the present Applicant is granted fourteen (14) days leave to file an appeal in this court without any further delay. As the Applicant's counsel protested the Application, the Applicant shall have costs of this Application.

It is so ordered.

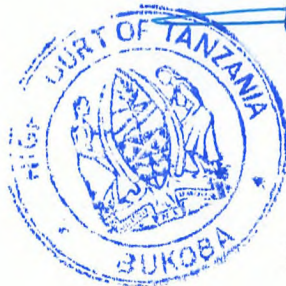



F.H. Mtulya

Judge

26.02.2021

This Ruling was delivered under the seal of this court in presence of the Applicant Mr. Fredrick Rwemanyira and his learned counsel Mr. Ali Chamani and in the presence of Ms. Pilly Hussein for the Respondent.




F.H. Mtulya

Judge

26.02.2021