

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

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

MISC. LAND APPLICATION NO. 93 OF 2017

(From the District Land and Housing Tribunal for Rungwe at Tukuyu in Land
Application No. 07 of 2016)

MARIA RAPHAEL.....APPLICANT

VERSUS

HURUMA JOSEPH (As the Legal
Representative of the Estate of
the Late JOSEPH JAMES MWALUKOBA).....**1ST RESPONDENT**
MOSES K. MAGAMGA.....**2ND RESPONDENT**
HTT INFRANCO.....**3RD RESPONDENT**
VODACOM.....**4TH RESPONDENT**

RULING

Date of Hearing: 18/02/2021
Date of Ruling : 26/02/2021

MONGELLA, J.

The applicant is seeking for extension of time within which to lodge an appeal against the decision of the District Land and Housing Tribunal for Rungwe at Tukuyu (the Tribunal) rendered in Land Application No. 7 of 2016. The matter proceeded ex parte against the 2nd respondent who never entered appearance despite being duly served with summons.



During the hearing, the applicant was represented by Mr. Siamini Ngwembe, learned advocate. Mr. Ngwembe advanced two main reasons for the delay. First, that there was delay in obtaining copies of judgment and decree. He said that the judgment was pronounced on 06th July 2017, but the copies were availed to them on 04th September 2017. He claimed that they wrote a letter requesting for the copies but they were not availed with the same until 04th September 2017. Under the circumstances the applicant was barred to lodge her appeal on time.

I however rejected this reason due to the fact that the record indicates that the judgment was ready for collection on 21st July 2017. The record does not support Mr. Ngwembe's submission on delay in obtaining copies of judgment. In **Samuel Emmanuel Fulgence v. The Republic**, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported), the Court of Appeal held that the date to be considered in computation of time is the date of certification of the copies of judgment and not the date of collection of the copies.

The other reason he gave is based on illegality on the impugned Tribunal decision. Mr. Ngwembe contended that the opinion of Tribunal assessors does not feature in the judgment and in the proceedings. He referred to the case of **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 in which it was ruled that before the Tribunal chairman pronounces his judgment, the opinion of assessors must be read before the parties. He argued that this omission is an illegality constituting sufficient cause for extension of time. To cement his point he referred to the case of **Charles Zephania Mwenesano v. Daniel Samwel Chuma**, Civil



Application No. 274 of 2015 in which it was held that illegality constitutes sufficient cause for extension of time.

On the other hand, Mr. Sweetbert Elgidius, learned advocate for the 4th respondent was the first to make reply submission. He argued that the illegality pointed by Mr. Ngwembe does not prejudice the right of the parties. He argued so saying that the judgment itself centred in determining the rights of the parties and the Tribunal chairman is not bound by the opinion of assessors, but only requires to accord weight to such opinion. He added that the judgment of the Tribunal does not come from the opinion of assessors, but from evidence adduced by the parties. Since there is no dispute on the determination of the rights of the parties then the decision of the Tribunal is correct. He prayed for the application to be dismissed with costs.

Mr. Walter Shayo, learned advocate who represented the 3rd respondent first concurred with the submission of Mr. Elgidius. He added that the court should consider the issue of illegality where the same has an effect of changing the decision. He argued that the illegality pointed out by the applicant does not have an effect of changing the decision of the Tribunal. He as well prayed for the application to be dismissed with costs.

On her part, the 1st respondent supported the application. She informed the court that she had no objection to the application.

I have duly considered the arguments by the parties' counsels. It is my settled view that, among the reasons that may be considered sufficient in



granting extension of time is the existence of illegality in the impugned decision. This has been decided in a number of cases. 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..."

However, a claim on illegality can only be entertained if it meets certain criteria. That is, if the illegality is apparent on face of record, is of sufficient importance and the determination of it shall not involve a long drawn process of argument. These criteria were settled by the Court of Appeal in the case of **Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010 (unreported). See also: **Kalunga and Company Advocates v. National Bank of Commerce Ltd**, Civil Application No. 124 of 2005; **Arunaben Chagan Mistry v. Naushad Mohamed Hussein & 3 Others**, Civil Application No. 6 of 2016 **Jehangir Aziz Abubakar v. Balozi Ibrahim Abubakar & Another**, Civil Application No. 79 of 2016

The appellant raised an issue of illegality to the effect that the Tribunal assessors were not involved in adjudication of the matter before it as required under the law. The counsels for the 1st and 2nd respondents did not dispute the existence of the illegality in the Tribunal judgment and



proceedings. They only argued that the illegality does not prejudice the rights of the parties.

In my settled view, the illegality raised in this application on effective involvement of assessors meets the criteria settled in ***Lyamuya Construction*** (supra). The law as settled by the courts is to the effect that the opinion of assessors has to be filed in writing in the Tribunal and read in the presence of the parties. The proceedings and judgment also have to clearly show the assessors' active participation in the matter. If this procedure is not adhered to it affects the entire proceedings and judgment. The courts have always considered the omission incurably fatal thus vitiating the whole proceedings and judgment. See: ***Edina Adam Kibona v. Absalom Swebe (Sheli)***, Civil Appeal No. 286 of 2017 and that of ***Tubone Mwambeta v. Mbeya City Council***, (supra).

The illegality raised is therefore of sufficient importance because it is mandatorily provided under the law to the extent that non-compliance thereof vitiates the whole Tribunal proceedings. It shall also not involve a long drawn process of argument because it is an error that is apparent on face of record. The illegality cannot be rectified unless the same is tested on appeal. See also: **section 23 (1) and (2) of the Land Disputes Courts Act, Cap 216, R. E. 2019** and **Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulation, G.N. No. 174 of 2003.**

In the upshot, I grant the applicant's application for extension of time basing on the point of illegality in the impugned Tribunal decision. The

applicant shall lodge her appeal within 21 days from the date of this ruling.

Dated at Mbeya on this 26th day of February 2021.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 26th day of February 2021 in the presence of Mr. Stewart Ngwale for the applicant, the 1st respondent, and Mr. Jonathan Lvinga for the 4th respondent.




L. M. MONGELLA
JUDGE