

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA  
MISC. LAND APPLICATION NO. 08 OF 2018**

**ABDALAH MWACHA.....APPLICANT**

**VERSUS**

**CHAMSAMBWE MOHAMED HASSAN..... RESPONDENT**

**(Application from the judgement of Shinyanga District Land and Housing  
Tribunal)**

**(Audax Constantine, Chairman)**

**dated 18<sup>th</sup> day of September, 2012**

**in**

**Land Case No. 89 of 2011**

.....

**RULING**

23<sup>rd</sup> October, 2020 & 12<sup>th</sup> February, 2021

**MDEMU, J.:**

This application for extension of time is brought under the provisions of Section 14 of the Law of Limitation Act, Cap.89. The application which is through chamber summons is on the following orders;

- (a) That, the Court may be pleased to grant  
extension of time for filling an appeal against  
the judgement of Land Case No.89 of 2011  
of Shinyanga District Land and Housing  
Tribunal.*

*(b) Costs.*

*(c) Any other and further reliefs as the honorable court may deem just.*

The application is supported by an affidavit sworn on 04<sup>th</sup> day of April, 2018 by one Abdalah Mwacha, the Applicant. When this Application came for hearing on 23<sup>rd</sup> of October, 2020, the Applicant was represented by Mr. Frank Samweli, Learned Counsel, whereas Mr. Mbatina, Learned Counsel represented the Respondent.

Submitting in support of the application, Mr. Frank Samweli first prayed the affidavit of the Applicant be adopted to form part of his submissions. He then submitted that, the main ground for extending time is that, the Applicant initially had appealed in time in Land appeal No.60 of 2012, High Court of Tanzania Tabora Registry. However, before hearing of the appeal, the Respondent approached the Applicant intending to settle the matter out of court. It is for that reason, the Applicant did withdraw the appeal so filed. He added that, following withdrawal of the appeal, the Respondent filed an application for execution which got granted. To him, the delay was due to being misled by the Respondent leading to withdrawal of the appeal.

He further insisted to court that, this application has overwhelming chances of success because the decision of the District Land and Housing Tribunal is tainted with illegalities to wit: **One**, the decision resulted from an application which was time barred and there was no leave for extension of time. **Two**, the Respondent had no *locus stand* to file a dispute as administrator of the estate of the late Fatuma Hassan in Probate Cause No.2 of 2011. This is so because, there was already another Probate Cause No.15 of 1998. He therefore concluded that, illegality constituted in the decisions is a good ground for extending time. He cited the case of **Ezron Magesa Malyogo v. Kassim Mohamed Said and Another, Civil Application No.227 of 2015** (unreported) at page 12 elaborating that, illegality in the impugned decision constitutes sufficient and good cause to extent time.

In reply, Mr.Mbatina first prayed the affidavit in reply be adopted to form part of his submissions. He then stated that, it is not correct to allege that, the dispute got settled out of court. To him, withdrawing appeal without leave to refile will not entitle the Applicant to refile the application so withdrawn. He cited Order XXXIII, Rule 1(1)(3) of the Civil Procedure Code, Cap.33 and the case of **Jonathan Mgonja vs.**



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at page 317 to support his point.

As to chances of success of the appeal, Mr.Mbatina submitted that, this is no longer a ground for extension of time. He further added that, in the Applicant's affidavit, there is nothing like illegality mentioned therein. As to the issue of *locus stand*, he stated that, the matter is on land disputes and not probate cause. Therefore, issues relating to the two letters of administration is in the probate court that is where jurisdiction rests and not land court. To him, the law is clear that, a part applying for extension of time should account for everyday of delay which is not the case here. He therefore prayed that, this application be dismissed with costs because the Applicant's affidavit and subsequent submissions are silent on it.

In rejoinder, Mr. Frank Samweli, reiterated his previous position specific that, illegality constitutes sufficient and good cause for extending time to appeal.

I have carefully gone through the judgement of the District Land and Housing Tribunal, submissions of parties and affidavit as well. The issue to determine here is whether the Applicant has shown good and sufficient cause for the delay as to allow this court to extend time to

appeal. This is a legal requirement provided for under the provisions of section 14(1) of the law of Limitation Act, Cap.89 and deployed by the Applicant in his chamber summons. The section reads:-

*14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

As it is, the application at hand is on extension of time to file an appeal on land matters. Along with the cited provisions in the chamber summons, I am of the view that, the provisions of Section 41(1) of the Land Disputes Courts Act, Cap.216 should also have been included. The said provisions talks for time to file an appeal and also empowers the court with discretion to extend time to appeal on good and sufficient cause. The section is reproduced as hereunder:-

*"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order provided that, the High Court may for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."*

In the section just quoted above, the court has discretion power to extend time on good cause. Is there any good and sufficient cause shown by the Applicant as to require this court to exercise its discretion power to extend time? There must be evidence to that effect deposed in the affidavit of the Applicant. In this, Paragraph 13 of the Applicant's affidavit states factors for delay such that:-

*a. The Respondent trick to direct the Applicant to withdraw Land Appeal No.60 of 2012 on promises to compromise out of the court, the promise which was not honored by the Respondent.*



*b. Litigation of a number of cases in various tribunal and courts before the Applicant got the proper forum and procedure to be followed.*

According to the grounds as quoted above, the delay was due to fake promises of the Respondent to settle the matter out of court which lead the Applicant to withdraw Land appeal No.60 of 2012. As stated above, the law provides clearly that, in order for the court to extend time to appeal, the Applicant must show good and sufficient cause for delay. This legal requirement was also stated in the following cases, just a few to mention:- **Salum Nhumbili V. Republic, Criminal Application No. 8 of 201;** **William Ndingu @ Ngoso V. Republic, Criminal Appeal No. 3 of 2014,** and **Dismas Bunyerere V Republic, Criminal Application No. 42/2017** (all unreported) .

Was there any arrangement of settlement out of court between the Applicant and the Respondent in the Land Appeal No. 60 of 2012, at the High Court of Tanzania at Tabora that prompted the Applicant to withdraw the appeal? Is that a sufficient cause? In the record, withdrawn order issued on 13<sup>th</sup> day of August,2014 reads as follows at page 1 of the proceedings:-

## **ORDER**

**S. M. RUMANYIKA, J;**

*Mr.Mussa Kassim Learned Advocte for the Appellant prays to withdraw this appeal but each party be directed to bear their own costs. Because his client appeared in person before Mr.Mtaki does not object but for the costs. As his client (the Respondent) had taken all the troubles from way back 2012 attending to the matter. That as long as the Appellant was able to hire and pay for the legal service rendered by Mr.Mussa Kassim, he was capable also to pay costs of this appeal....."*

In this therefore, the first question whether there was any withdrawal order of the appeal, is in the affirmative. However, the order is silent as to whether the withdrawal of the appeal was influenced by the need to settle the matter out of court. This ground therefore is baseless and is accordingly dismissed.

On the delay caused by a number of litigations in various tribunals and courts, it is on record that, the judgement in Land Application No. 89 of 2011



was delivered on 18<sup>th</sup> day of September, 2012. This led to the institution of Land Appeal No.60 of 2012 which was withdrawn on 13<sup>th</sup> day of August, 2014. Later, the Applicant filed application No.5 of 2016 for restoration of the withdrawn appeal which was again dismissed on 10<sup>th</sup> day of February, 2017. Yet, on 5<sup>th</sup> day of April, 2018, the Applicant filed this application for extension of time to appeal.

In this application No.8 of 2018, the Applicant raised an objection but it was overruled on 5<sup>th</sup> day of March, 2020. The Applicant then intended to appeal to the Court of Appeal but on 3<sup>rd</sup> day of April, 2020, informed the Deputy Registrar his desire to withdraw the notice of intention to appeal to the Court of Appeal. Much as there is no hard and fast rule as to what constitutes sufficient cause as was stated in the case of **Philemon Mang'ehe t/a Bukine Traders v. Gesso Hebron Bjuta, Civil Application No.8 of 2016; Henry Maeda and Another v. Ms. John Anael Mongi, Civil Application No.31 of 2013** (all unreported), the saga and the history in search of justice in this case requires somewhere to have substantive justice determined among and between the parties. This cannot be done unless the appeal finds its way to court.

As to the ground of illegality, Mr. Frank Samweli submitted that, one, there are illegalities in the decisions of the District Land and Housing

Tribunal of Kahama resulting from an application which was time barred. And two, the Respondent had no *locus stand* to file a land dispute as administrator of the estates of Fatuma Hassan on Probate Cause No.2 of 2011 because there was already another Probate Cause No.15 of 1998. This in my view, may be cured if the appeal is processed. I Therefore concur with Mr. Frank Samweli that, illegality in this matter constitutes sufficient cause for extending time. See also the case of **Amour Habib Salim v. Hussein Bafagi Civil Application No.52 of 2009** (unreported).

For that reason, I am of the opinion that, the Applicant has shown sufficient and good cause for the delay. Having said so, I allow this application to the extent of illegality as stated above. Time to file appeal to this court is extended for a period of forty five (45) days from the date of this ruling. Each party to bear own costs.

I order accordingly.

  
**Gerson J. Mdemu**  
**JUDGE**  
**12/02/2021**

**DATED at SHINYANGA** this 12<sup>th</sup> day of February, 2021.

  
**Gerson J. Mdemu**  
**JUDGE**  
**12/02/2021**

