

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISC. LAND APPLICATION. NO.51 OF 2020**

**WILLIAM BUZIZI..... APPLICANT**

**VERSUS**

**PETRO MAKULA..... RESPONDENT**

(Application from the Decision of the High Court of Tanzania, at Shinyanga)  
dated the 30<sup>th</sup> of October, 2019

In

Misc. Land Appeal No.2 of 2018

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**RULING**

3<sup>rd</sup> November, 2020 & 26<sup>th</sup> February, 2021.

**MDEMU, J.:**

In this application, the Applicant moved this court by way of chamber summons under the provisions of section 5(1) (c) and 11 (1) of the Appellate Jurisdiction Act, Cap.141; Rule 45 and 47 of the Court of Appeal Rules; section 47(1)(2)(3) of the Land Disputes Courts Act, Cap.216 and section 95 of the Civil Procedure Code, Cap.33 on the following orders, that is to say:

- 1. That this court may be pleased to grant extension of time for the Applicant to file notice of appeal to the Court of Appeal out of time.*

- 2. That this court may be pleased to extend time within which the Applicant to file application for a certificate that points of law are involved in the appeal*
- 3. That costs of this application be in the cause.*

The application is supported by the affidavit of one William Buzizi, the Applicant herein sworn on 24<sup>th</sup> of August, 2020. According to the affidavit, this court (Mkeha J.) dismissed the appeal of the Applicant on 30<sup>th</sup> of October, 2019. To the expiration of thirty (30) days period required by the Court of Appeal Rules to lodge the notice of appeal, the Applicant failed to exercise his right to have the notice of appeal in place hence, this application.

I heard the Applicant under the service of Mr. Steven Kaijage, learned Advocate on 3<sup>rd</sup> of November, 2010 prosecuting the application. The Respondent on that day appeared in person. In his submissions in support of the application, the learned counsel along with adopting the affidavit to form part of his submissions, he observed that, according to paragraph 3 of the affidavit, the copy of judgment he received had some errors and it was appeal No.2 of 2018 instead of appeal No. 24 of 2018. This made him not to understand the exact judgment thus had to make follow ups which took much of his time till when he obtained legal assistance.

In the course of accounting for days of the delay, the learned counsel submitted that from 26<sup>th</sup> January 2020 to mid-March, the Applicant was sick attending clinic to the traditional medical practitioner. He also observed that, following Covid 19 pandemic, and as he is above 70 years of age, he had to be in isolation. He thus did nothing regarding filing the notice of appeal to the Court of Appeal.

As to illegality being the ground to extend time, it was the learned Counsel's submissions that, the decision of the Ward Tribunal was signed by the Secretary contrary to the provisions of section 4(1)(a)(2) of the Ward Tribunals Act. As the secretary is not a member, to the learned counsel, this renders the proceedings a nullity. In his view, this also constitutes sufficient cause to extend time. Under the premises, the learned counsel urged me to allow the application because there is merit on it. He cited the case of **Mada Qori vs. Isaki Gilba Misc. Land Appeal No.2 of 2013** (unreported)

In reply, the Respondent resisted the application by submitting that, the Applicant was not at the traditional medical practitioner. In essence, the Applicant filed this application after noting that, there are execution processes in place. He added that, the delay of almost eleven (11) months from 30<sup>th</sup> of October, 2019 when the decision was delivered cannot be accommodated.



He conceded that the said decision was signed by the Secretary but he observed this not to be a convincing reason. He thus asked me to dismiss this application.

The learned counsel for the Applicant rejoined briefly that, much as the decision was delivered on 30<sup>th</sup> of October, 2019, the Applicant got confused as to what decision to follow due to errors in the case number. Otherwise, he reiterated his previous position on Covid 19 pandemic and attending clinic to traditional medical practitioner on the side of the Applicant. This was all.

From what parties submitted and as per the record, one question to ask is whether the Applicant has shown good and sufficient cause within which this court may deploy in extending time to file notice of appeal to the Court of Appeal. According to the affidavit, reasons are basically two. **One** is that the Applicant was attending clinic at Tabora to a traditional medical practitioner. In this, in the first place, I agree with Applicant's counsel that we may not locate any documentation as proof that the Applicant attended that clinic in the manner such traditional medical practitioner operate their business.

This however does not mean that, the Applicant is simply required to mention to attend for medication in those clinics without evidence to so

prove. According to the affidavit, the Applicant in paragraph 5 of the affidavit, the Applicant deposed that:

*Apart from the above reasons, the period from 26<sup>th</sup> January, 2020 I fell sick until the middle of March, 2020 for all that time, I was attending traditional healers*

As it is, the Applicant just accounted the period from 26<sup>th</sup> January, 2020. It has to be remembered that, the decision of this court subject for appeal was delivered on 30<sup>th</sup> of October, 2019. In terms of Rule 83 (2) of the Court of Appeal Rules, notice of appeal was to be lodged within 30 days thus taking us to 30<sup>th</sup> of November, 2019. This means, the Applicant has not accounted what was he doing from 1<sup>st</sup> of December, 2019 to 25<sup>th</sup> of January, 2020. This is equally so as to reasons associated to Covid 19 pandemic.

In further perusal to the affidavit, it appears the Applicant as per paragraphs 2, 3 and 4 was misled by number of the appeal to be 2 of 2018 while the real number was 24 of 2018. I think this should not detain me on the following: **First**, as per paragraph 2 of the affidavit, the Applicant was supplied the said judgment on 16<sup>th</sup> of January, 2020. That means, by the time he received the judgment, time to lodge the notice of appeal had already lapsed. **Second**, there is no requirement that a person cannot lodge the

notice of appeal to the Court of Appeal unless he possesses the judgment.

**Third**, the Applicant was present in court when the judgment was delivered.

The complained case number (that is Misc. Land Appeal No.2 of 2019) is the very judgment that the Applicant intends to challenge to the Court of Appeal.

In the chamber summons, the Applicant appended the following words:

*MISC. LAND APPLICATION NO.51 OF 2020*

*(Arising from Misc. Land Appeal No.2 of 2019.....*

The Applicant may not therefore complain on the case number which he himself intends to challenge the judgment in that case. In my view, much as the Applicant has not shown the other case leading to that mishap, my candid observation is that, there was nothing that misled him. This ground is therefore an afterthought and is accorded no weight at all. It follows that, the Applicant never accounted for the days of the delay as stated in the case of **Lyamuya Construction Company Ltd. vs Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010**(unreported) in the following version as at page 6 through 7:

*As a matter of general principles, it is in the discretion of the*

*Court to grant extension of time. But that discretion is judicial*



*and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:*

*a) The Applicant must account for all the period of delay.*

*b) The delay should be inordinate.*

*c) The Applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*

*d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

**Two,** is on illegality. In this, the main complaint of the Applicant is that, the decision of the Ward Tribunal was signed by the secretary thus contravening the provisions of section 4 (1) (a) (2) of the Ward Tribunals Act, Cap. 206. The said provisions read as hereunder:

*(1) Every Tribunal shall consist of—*

*(a) not less than four nor more than eight other members elected by the Ward Committee from*

*amongst a list of names of person's resident in the ward compiled in the prescribed manner;*

*(b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).*

*(2) There shall be a secretary of the Tribunal who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.*


I therefore agree with the Applicant that, the Secretary is not a member to the Ward Tribunal. I am aware of the legal position that, illegality, if proved to exist in the impugned decision, constitutes sufficient ground to extend time. See **Lyamuya Construction Company Ltd. vs Board of Registered Trustee of Young Women's Christian Association of Tanzania** (supra)

What however is important is that, the Applicant has not shown how the signing of the decision by the Secretary prejudiced him or that affected

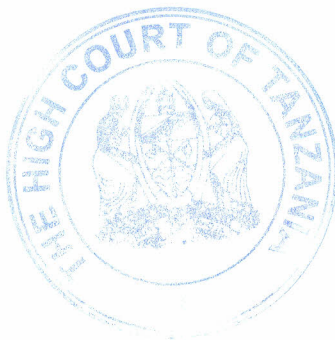



the contents of the decision. Unless this is shown, the illegality complained of cannot constitute sufficient cause.

Having all that, I have not seen sufficient cause for the granting of this application and is accordingly dismissed. Each part to bear own costs. It is so ordered.

  
**Gerson J. Mdemu**  
**JUDGE**  
**26/02/2021**

**DATED** at **SHINYANGA** this 26<sup>th</sup> day of February, 2021.



  
**Gerson J. Mdemu**  
**JUDGE**  
**26/02/2021**