

IN THE HIGH COURT OF TANZANIA

AT TABORA

MISC.LAND APPLICATION NO.33 OF 2017

(Originating from Land Application No. 74/2012 of the District Land
and Housing Tribunal for Tabora)

ISSA RAMADHANI.....APPLICANT

VERSUS

FRANCIS RAMADHANI NJAU.....1ST RESPONDENT

THE DIRECTOR BUYUNI CO. LTD.....2ND RESPONDENT

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RULING

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Date of last Order: 10/02/2021

Date of Delivery: 01/03/2021

AMOUR S. KHAMIS, J.

Aggrieved by judgment of the District Land and Housing Tribunal for Tabora which declared Francis Ramadhani Njau as a lawful owner of the disputed land, Issa Ramadhani sought an extension of time to appeal to the High Court.

The application preferred by Chamber Summons under Section 41(2) of the Land Disputes Court Act, Cap. 216, R.E. 2002 as amended by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016, was supported by an affidavit affirmed by Mussa Kassim, learned advocate.

In the affidavit, Mr. Mussa Kasim deposed that the delay was due to the tribunal's delay to supply copies of a judgment, decree and proceedings which were availed after expiry of the due date for an appeal.

Mr. Kassim further averred that the trial tribunal's decision was tainted with illegalities and irregularities worth consideration and determination by this Court, namely:

- (i) That the trial tribunal proceedings and decision thereon is a nullity for being conducted in violation of the fundamental principles of trial with the aid of assessors upon the tribunal being constituted and presided over by different assessors during the trial of the said land application.
- (ii) That the learned chairman allowed the assessors to cross-examine witnesses contrary to the law.
- (iii) That the learned chairman erred in law by misdirection and non-direction in evaluating evidence on record which error led to wrongly decide in favour of the 1st Respondent.

Mr. Kelvin Kayaga, learned advocate for the 1st respondent, filed a counter affidavit generally disputing the applicant's averments while Cresens Richard, a principal officer of the third respondent, Buyuni Co. Ltd, filed a counter affidavit generally conceding to the applicant's averments.

By parties consent the matter was canvassed through written submissions and the time line set by the Court was observed.

I have read and considered the counsel rival submissions addressed the relevant issues under consideration. The main issue is whether a good cause for extension of time was shown by the applicant.

Mr. Mussa Kassim submitted that composition of the tribunal consisted of chairman and a minimum of two assessors.

He contended that proceedings in the trial Court commenced on 18/04/2013 when two assessors were present, namely: Mr. B.S. Makonga and Mrs. N.G. Ngwila.

He said that hearing continued on 6/8/2013 with a different set of assessors, thus Mr. E.K. Mkemwa and Mrs. N.G. Ngwila.

The counsel alleged that on 12/6/2014 hearing continued with two other assessors: Mrs. A.W. Nsimbo and Mrs. N.G. Ngwila.

Mr. Kassim asserted that such irregular change of assessors was a serious illegality leading to nullification of the trial tribunal proceedings and judgment.

In support of the contention, he cited a decision of the Court of Appeal of Tanzania in **AMEIR MBARAK AND ANOTHER V EDGAR KAHWILI, CIVIL APPEAL NO. 154/201 CAT** (unreported) wherein at page 8 the Court had this to state.

“Another irregularity which is apparent on the record is the change of assessors which offends Section 23(3) of the Land Disputes Courts Act (supra) which does not envisage a complete change of all assessors who were in attendance at the commencement of the trial. However, at the trial the following transpired. When the trial commenced on 25/8/2005, from page 28 to 47 the present assessors were P. Tagalile and J. Vahage. On 30/5/2006 the assessor present were M. Magohagasenga and P. Mgulunde. On 15/8/2006, at the hearing of the defence case, none of the assessors was present. Subsequently, on 6/9/2009 Judgment was pronounced and it was also signed by Tagalile and Vahaya the assessors who were present at the beginning of the trial. Since neither of the two sets of assessors were involved throughout the entire trial, the trial was not conducted by duly constituted tribunal as required by Section 23 (1) and (2) of the Land Disputes Courts Act (Supra).”

Mr. Kassim further drew attention of the Court to page 10 of the Judgment in **AMEIR MBARAK** wherein the Court held that:

“In view of the aforesaid incurable irregularities, the trial was vitiated. As to the way forward, we accordingly exercise our revisional powers under Section 4(3) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002. We hereby nullify proceedings and Judgment of the tribunal and the High Court in Land Appeal Case No. 16 of 2010 and Ruling in Misc. Civil Application No. 1 of 2012 because they all stemmed from nullity. If any of the parties so wish, he/she may recommence the action in the court of competent jurisdiction subject to the law of limitation.”

The applicant's counsel submitted that the trial tribunal's proceedings lacked an order requiring its assessors to give written opinion and further

missed an order specifying a date for assessors' opinions to be read to the parties.

The learned counsel cited the case of **Edina Adam Kabina V Absolom Swebe (Sheli)** Civil Appeal No. 286/2017 in which the Court of Appeal (unreported) had this to say:

"Adverting to the case at hand, when the chairman closed the case for defence, he did not require the assessors to give their opinion as required by the law. On the authorities cited above, that was fatal irregularity and vitiated the proceedings."

Finally, Mr. Kassim submitted that the irregularities pointed out were sufficient grounds for extension of time for the purpose of appeal.

Mr. Kelvin Kayaga, learned advocate for the respondent faulted the applicant's counsel and contended that the application did not disclose a sufficient reason for extension of time.

He contended that an alleged delay to supply copies of Judgment and Proceedings was not a sufficient cause for extension of time on the ground that it was not a legal requirement to attach copies of proceedings of the trial tribunal for an appeal to the High Court.

Mr. Kayaga asserted that the grounds raised in Paragraph 3 (i) (ii) and (iii) of the affidavit in support of the application did not qualify in law to be points of illegalities as to warrant an order for extension of time.

The learned counsel argued that for an allegation to be an illegality, it must render the lower Court to lack jurisdiction, it must be apparent and it must not be established upon a long-drawn argument.

Mr. Kayaga added that an applicant who seek an order for extension of time must among other things account for each day of the delay.

The counsel cited the case of **Ngao Godwin Losero** (Supra) in which the Court of Appeal reiterated guidelines for the grant of extension of time, to wit: *the applicant must account for all the period of delay, the delay should be inordinate, the applicant must show diligence and not apathy, negligence or*

sloppiness in the prosecution of the action that he intends to take and if the Court feels that there (?)

Mr. Kayaga submitted that the points raised by the applicant were mere grounds of appeal incapable of warranting an order for extension of time and argued that the applicant did not account for each day of delay.

In rejoinder, Mr. Kassim contended that he had sufficiently demonstrated to this Court the illegalities that featured on the face of the trial tribunal's records and reiterated a prayer for extension of time.

Having set this background, I wish to thank both counsel for their industry demonstrated in the research and lines of arguments.

I am also indebted for the various authorities supplied to the Court. While I will not be able to make reference to all of them, I have seriously taken them into consideration.

The main issue for consideration and determination is whether or not a good cause has been established for extension of time.

Section 41(2) of the Land Disputes Courts Act, Cap. 216, R.E. 2002 as amended by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 provides that:

"41(2) An appeal under Section (1) may be lodged within forty-five days after the date of the decision or order.

Provided that, the High Court, may for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days"

It is now trite law that when an allegation of illegality is made, it is important for the Court of law to give opportunity to a party raising it to have the issue considered on merits.

In the **PRINCIPAL SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICES V DERRAM VALAMBIA (1992) TLR 182** the Court of Appeal held that:

"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”

In the present case, an allegation relating to improper constitution of the tribunal at a time of trial was made. This allegation touches on jurisdiction of the trial tribunal and if sufficiently proved is likely to vitiate validity of the proceedings.

An allegation on record touching on irregular substitution of assessors on each day of trial and the tribunal's failure to order assessors to present opinions in line with the law cannot be overlooked.

In the result, the application is hereby granted. Let the applicant file an appeal within fourteen (14) days from the date of this ruling. I make no order as to costs. It is so ordered.



A handwritten signature in blue ink, appearing to read "Amour S. Khamis", is written over a circular stamp.

AMOUR S. KHAMIS

JUDGE

01/03/2021

Ruling delivered this 1st day of March, 2021 in the presence of Mr. Musa Kassim, advocate for the applicant and Mr. Kashindye Lucas, advocate for the 1st respondent but in absence of the 2nd respondent.

B.R. NYAKI

DEPUTY REGISTRAR

1/3/2021

Right of Appeal explained fully.

B.R. NYAKI

DEPUTY REGISTRAR

1/3/2021