

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF KIGOMA**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**MISC. LAND APPLICATION NO. 16 OF 2021**

(Arising from Land Appeal No.101 of 2015 in the District Land and Housing Tribunal for Kigoma, Hon. A.R Ntibampema - Chairman, Originating from Land Dispute No. 15/2015 at Kibirizi Ward Tribunal).

**CHUKI IBRAHIM MASALA..... APPLICANT**

**VERSUS**

**OTO DUNIA MUSSA .....RESPONDENT**

**RULING**

29<sup>th</sup> & 29<sup>th</sup> April, 2021

**A. MATUMA, J**

The applicant is seeking extension of time to appeal against the decision of the District Land and Housing Tribunal in Land Appeal No. 101/2015.

When the application was tabled before me for hearing, the Applicant was present in person and represented by Mr. Michael Mwangati learned Advocate whereas the respondent was as well present in person and represented by Mr. Method R.G. Kabuguzi learned Senior Advocate.

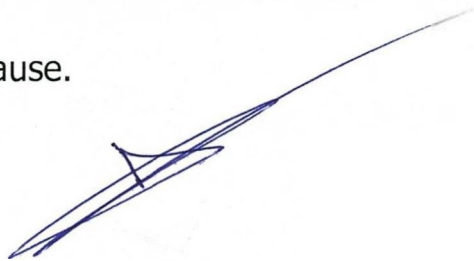
Mr. Michael Mwangati learned advocate for the Applicant submitting on the application stated that the applicant is applying for extension of time so that she can appeal against the decision of the District Land and Housing

Tribunal in Land Appeal No. 101 Of 2015 for two major grounds for the delay. One, that the delay for the Applicant to appeal in time was caused by failure of the Tribunal to supply her with the copy of the impugned judgement in time despite the fact that she wrote a letter to the tribunal applying for the same. The stated letter is attached to the applicant's affidavit. Two, that there are illegalities in the trial court's records. The illegality alleged is that, the respondent had no locus standi to sue or be sued according to the nature of the dispute property which at all times was claimed as the estate of one Mwalimu Dunia and her sister Bi. Tiba who are both deceased persons. He referred this Court to the case of ***The Principal Secretary Ministry of Defence and National Service V. Devram Valambia*** (1991) TLR 387, to the effect that illegalities on the lower court's records constitutes sufficient ground for extension of time. He therefore prayed that this application be granted.

On the party of the respondent, Mr. Method R.G. Kabuguzi learned advocate argued that the application is without any merit as there is inordinate delay for the applicant to have appealed against the impugned judgment. He submitted that the impugned judgement was delivered on 06/07/2017 and this application was brought to court on 08/04/2021 the period which is too long. He further argued that it is not true that the

applicant was not supplied with the impugned judgement from July, 2017 to 08 April, 2021 as she has not even stated when did she exactly get such judgement. The learned Senior advocate drew the attention of this Court to the principle of the law that for extension of time to be granted, the applicant must account for each day of the delay but she has not accounted as such.

About illegality, the respondent's advocate was of the argument that, there is no any illegality on the face of record and even if there would be such illegality, then on account of the inordinate delay, the applicant ought to have shown what is the miscarriage of justice for the alleged illegalities which she did not. He distinguished **Valambia's** supra and cited the case ***Yakobo Magoiga Gichele V. Peninah Yusuph***, Civil Appeal No. 55 of 2017 which he considered relevant in the instant matter in which the court of Appeal ruled out that illegality is no longer a ground to vitiate the findings of the lower courts unless such illegalities has occasioned miscarriage of justice. He pointed out that in the instant matter the applicant has not stated what miscarriage of justice was occasioned on the alleged illegalities and therefore this application be dismissed with costs for it has been brought without justifiable cause.



In his rejoinder submission Mr. Mwangati insisted that there is illegality that's why they have brought it as a ground for the extension of time.

Having heard the parties for and against the application, I find this application to have been brought without any sufficient cause as rightly argued by the respondent's advocate Mr. Method R.G. Kabuguzi. This is because the Applicant has not fulfilled the guidelines upon which time should be extended in an application for extension of time as settled in a various authority including but not limited to ***Bruno Wenceslaus Nyalifa V. The Permanent Secretary Ministry of home affairs and Attorney General***, Civil Appeal No. 82 of 2017.

In that case the court of appeal quoted that of ***Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 which had set the guidelines for the factors to be considered by the Court in the exercise of its discretion to extend time or not. The guidelines are:-

- (i) *The applicant must account for the all period of delay.*
- (ii) *The delay must not be inordinate*

- (iii) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.*
- (iv) *If the court feels there are sufficient reasons, such as the existence of a point of Law of sufficient importance such as the illegality of the decision sought to be challenged.*

In the instant application, the impugned decision was delivered way back on the 6<sup>th</sup> July 2017. Just four days later on the 10<sup>th</sup> July, 2017 the applicant wrote a letter to the tribunal requesting for the Copy of the said judgment. Such letter which is attached to the Applicant's affidavit was received by the tribunal on the same day i.e 10/07/2017 and dully endorsed.

Therefrom the applicant did not take any active action either in follow up of the impugned judgment if she was really not supplied in time or to appeal if she was soon supplied with the same or even to apply for extension of time soon after the expiration of the time. As rightly argued by Mr. Kabuguzi learned advocate the applicant is silent not only in her affidavit but also in her submission before me through the mouth of her advocate as to when exactly she got supplied with such impugned judgment so that we can measure the real time of the delay from when she was supplied with such judgment. The silence of the applicant as to when exactly she was supplied

with the impugned judgment can justifiably be inferred to draw adverse inference against her that, had she stated as such the same would be found against her favour in the meaning that she was soon supplied after her request.

According to the Applicant's own affidavit, she was awakened by the Respondent's Application for execution on the 11<sup>th</sup> November, 2020. That means in the absence of such application, she would still have been relaxed to date. This application is therefore, nothing but an afterthought. In rejecting to grant extension of time instigated by afterthoughts like in the instant matter, I had time to rule out in the case of **Lucas Mtwе and Salmon Nkobongo versus Manyovu Amcos Limited**, Misc. Civil Application no. 29 of 2020, High Court at Kigoma that;

*'I am not ready to give any room to such afterthoughts as by doing so would be bringing absurdity in the administration of justice. This Court and the Court of Appeal of Tanzania have always been discouraging matters instigated by afterthoughts. One of the decisions to that effect includes; **East African Development Bank versus Blueline Enterprises Tanzania Limited**, Civil Application no. 47 of 2010, CAT at Dar es salaam'*

I still stand by such observation and rule the same in the instant application.



On the issue of illegality, I am just reiterating what I decided in the case of ***Gombe High School (Mkurugenzi wa Shule ya Sekondari Gombe School-Yared Fubusa-PHD) Versus Ruhwanya Kilangi (PC) Civil Appeal No. 08/of 2020*** at page 7 that;

*'For irregularity to be a ground for extension of time, the same should be apparent on the face of the trial court's records and should not be traced after a long-drawn argument of the parties. The rationale behind is very clear, allowing the parties to extensively argue the alleged irregularities in an application for extension of time would mean allowing arguments on appeal itself in disguised manner. If that is done then the intended appeal would be pre-empted as the ground thereof would have been determined conclusively by the higher court in which the intended appeal is to be filed'.*

In the instant matter the Applicant has not accompanied the impugned judgment nor the proceedings of the lower courts. I have therefore nowhere to peruse the alleged illegalities and his averments that the Respondent had no locus to sue or be sued cannot be tenable. Even though, the same would be a ground of appeal had she appealed in time. Furthermore, the applicant's duty in an application of this nature is to account for each day of the delay, not to argue an appeal in a disguised manner on the pretext of illegalities. How did the alleged illegalities delay her to appeal within the prescribed time? Would she appealed in time, the

illegalities could have not been raised and determined as grounds of appeal? In the absence of clear answers to these questions, illegality cannot be taken as a shield to inordinate actions of the applicant to prosecute her appeal within the legal parameters.

In the circumstance, it is my firm finding that this Application has been brought without any sufficient cause and it is hereby dismissed in its entirety with costs. Right of Appeal to the court of Appeal subject to the legal requirements is hereby explained.



**A. Matuma**

**Judge**

**29/4/2021**

**Court:** Ruling delivered this 29<sup>th</sup> day of April, 2021 in the presence of both parties in person.

**Sgd: A. Matuma**

**Judge**

**29/4/2021**