

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPEAL NO.03 OF 2021

*(Arising from the District Land and Housing Tribunal of Mwanza in Misc.
Application No. 186B of 2019, originating from Buzuruga Ward Tribunal in Application
No.39 of 2017)*

NYAMWIKONDO W. TIMAN APPELLANT

VERSUS

JAMAL HUSSEIN RESPONDENT

JUDGMENT

Date of last Order: 19.05.2021

Date of Judgment: 21.05.2021

A.Z.MGEYEKWA, J

The Appeal originates from Buzuruga Ward Tribunal in Land Application No. 39 of 2017. The appellant lodged a suit against the respondent whereas the trial tribunal decided in favour of the respondent. Dissatisfied, the appellant filed a Misc. Application No. 186B of 2019 at the District Land and Housing Tribunal for Mwanza praying for leave to file an appeal out of time.

The appellate tribunal did not file an appeal until the year 2020 when he applied for extension of time to file an appeal out of time before the District Land Court Housing Tribunal for Mwanza. The District Court determined the application and found that the appellant has not stated good reasons for extension of time, as a result, the application was dismissed.

Aggrieved, the appellant filed the instant appeal which contains five grounds of appeal as follows:-

- 1. That, the District Land and Housing Tribunal erred in law and fact to deny the Appellant the right to appeal out of time.*
- 2. That, the District Land and Housing tribunal erred in law and fact in deciding that there are no sufficient reasons to grant extension of time to appeal.*
- 3. That the proceeding and decision of the Buzuruga Ward Tribunal has irregularity and illegality which need the attention of the District Land and Housing Tribunal.*
- 4. That it is for the interest of justice this Appeal be allowed to avoid irreparable loss to the Appellant.*
- 5. That there are overwhelming chances of successes in the intended appeal.*

When the matter was called for hearing on 19th May, 2021, the appellant was represented by Ms. Hidaya, learned counsel and the respondent appeared in person, unrepresented.

Arguing in support of the grounds of appeal, Ms. Hidayat consolidated the first and fourth grounds because they are intertwined. She also opted to argue the second, third, and fifth grounds separately.

On the second ground, the learned counsel for the appellant lamented that the District Land and Housing Tribunal faulted itself to rule out that the appellant had no good reasons to move the tribunal to grant extension of time to file an appeal. She spiritedly argued that the appellant had good reasons as stated in her affidavit. She stated that when the appellate tribunal delivered its judgment the applicant was instructed to attach correspondence letters between her and the District Council of Ilemela. Ms. Hidayat fortified his submission by referring this court to the first appellate court records specifically annexures 2, 3, 4, 5, 6, and 7 attached to the appellant's application. She added that the appellant was not informed that she can appeal against the trial tribunal decision.

Ms. Hidayat continued to argue that after the deliverance of the said judgment the appellant lost her child thus she was busy searching for her missing daughter. To support her submission she referred this court to the first appellate court records specifically annexure 8. She went on to state

that the appellant also complained that the trial court decision was tainted with illegality however, the appellate tribunal did not consider her ground of illegality.

Submitting on the third ground, it was Ms. Hidaya's contentious that the decision of Buzuruga Ward Tribunal is tainted with irregularities and illegality the same attracts the attention of the appellate tribunal. She added that illegality is a good reason for extension of time. To bolster her submission she referred this court to the case of Mohamed **Salum Naudi v Elizabeth Jeremiah**, Civil Reference No. 4 of 2017 at Dar es Salaam (unreported).

In respect to the fifth ground, Ms. Hidaya simply submitted that the appellant had greater chances to win the intended appeal. Thus, she urged this court to allow her appeal.

Arguing on the first and fourth grounds, she stated that in case this court will allow this appeal then the respondent will not be prejudice in any way. She added that the respondent in his counter-affidavit did not mention how he will be affected if this appeal will be granted. She went on to state that the purpose of filing an appeal is to solve the existing dispute between the parties.

On the strength of the above argumentation, the learned counsel for the appellant beckoned upon this court to do justice and allow the appeal.

Resisting the appeal, the respondent had not much to say than to urge this court to adopt and consider his reply to the petition of appeal and form part of his submission.

Rejoining, the respondent reiterated her submission in chief and asserted that the appellant had good reasons to warrant this court to grant her application for extension of time to file an appeal out of time. Insisting, she stated that the appellant raised an issue of illegality, the same is a good ground for this court to allow her to file an appeal out of time.

Having summarized the submissions and arguments by both sides, I am now in the position to determine the grounds of appeal before me. In my determination, I will consolidate the first and fourth grounds because they are intertwined. Equally related are the second, third, and fifth grounds which I shall determine together. The rest of the grounds will be argued separately in the order they appear.

In determining the second, third, and fifth grounds, the appellant is complaining that the appellate tribunal faulted itself to dismiss her

application for extension of time to file an appeal out of time while she had good reasons for her delay to file the said appeal. The appellant stated that she was not informed that the right to appeal was provided and she claimed that she was in a hard situation after finding out that her daughter went missing and the appellant's Advocate has also stated that the applicant raised an issue of illegality at the first appellate tribunal.

The records reveal that the appellant testified to the effect that she was making a follow-up at the Municipal Council whereas she lodged several complaints concerning the dispute of boundary against the respondent. The appellant wrote a complaint letter in 2017. Again, she wrote a letter in 2018. Both letters were written after two years after the delivery of the trial tribunal judgment. It seems the appellant was not aware of what step to take after the delivery of the trial tribunal judgment thus she wasted her time in the Municipal Council offices fighting for her rights. Although this is not a good reason for the delay, however, I have noted that the trial tribunal did not inform the appellant that she had a right to file an appeal. The trial tribunal judgment is silent whether the Chairman addressed the appellant that she has the right to appeal against its decision.

Nonetheless, the appellant's grounds for seeking extension of time to file an appeal out of time was also based on the ground of illegality. In the case of **TanESCO v Mufungo Leonard Majura and 15 Others**, Civil Application No. 2016, (unreported), the Court of Appeal of Tanzania held that:-

*"Notwithstanding the fact that the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, **there is a compliant of illegality in the decision intended to be impugned suffices to move the Court to grant extension of time so that, the alleged illegality can be addressed by the court.**" [Emphasize added].*

Guided by the above authority, I will determine whether there is a point of law involved in this instant application. I have gone through the applicant's affidavit dated 23rd January, 2019 specifically paragraph 9 of her affidavit, and found that she has raised a point of law. The applicant stated that the trial judgment has a lot of defects and the applicant's appeal has a great chance of success. The appellate tribunal ought to base its decision not only on the submission made by parties but also on their pleadings. In case the Chairman of the appellate tribunal would have noted that the appellant raised an issue of point of law in her affidavit he would have decided otherwise.

There are a plethora of legal authorities on illegality as a suitable ground for extension of time. As it was decided in numerous decisions of the Court of Appeal of Tanzania. In the case of **Lyamuya Construction Company Limited Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported), the Court of Appeal of Tanzania held that:-

*" Since every party intending to appeal seeks to challenge a decision either on points of law or facts, **it cannot in my view be said that in Valambhia's case the Court meant to draw a general rule** that every applicant who demonstrates that his intended appeal raises points of law **should, as of right, be granted extension of time if he applies for one.** The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction, (but), not one that would be discovered by a long drawn argument or process."*

Applying the above authority, I find that the appellant has raised a point of law that attract the appellant tribunal to allow her application and determine the appeal on merit.

The respondent on paragraph 3 of his counter-affidavit opposed the ground of illegality on account that there was no illegality committed by the trial tribunal which needs the attention of the appellate tribunal. I differ with the respondent's view for the reason that as long as the appellant has raised an issue of point of law in her affidavit the same constitutes a good cause for extension of time. In the case of **Andrew Athuman Ntandu & Another v Dustan Peter, Administrator of Estate of the late Peter John Rima**, Civil Application No. 551 /01 of 2019 (unreported), the Court of Appeal held that:-

*" The rights to be heard is one of the fundamental rights of litigants in a trial and therefore, failure by the trial court to give the parties the right to be heard is illegality. **Moreover, it is settled law that a claim of illegality of the impugned decision constitutes good cause for extension of time regardless of whether or not reasonable explanation has been given by the applicant to account for the delay.**"*
[Emphasis added].

Applying the above authority it suffices to state that a claim of illegality of the impugned decision constitutes good cause for extension of time regardless of whether or not a reasonable explanation has been given by the

applicant/appellant. See also the cases of **Victoria Real Estate Development Limited v Tanzania Investment Bank and Others**, Civil Application No. 225 of 2014 and the case of **Losindilo Zuberi v Ally Hamis**, Civil Application No.27 of 1998 (unreported), the Court of Appeal of Tanzania observed that the application for extension of time is granted where the applicant has raised an issue of illegality.

Apart from just mention the issue of illegality. Ms. Hidayah, learned counsel for the appellant has elaborated that the appellant wants to challenge the decision of the trial tribunal decision is tainted with irregularities. In my view, the appellant has raised a point of law which attracts the attention since she wanted to challenge the trial tribunal decision based on the question of irregularities of the trial court. Taking to account that the first appellate court did not determine the issue of illegality.

Since the determination of these grounds suffices to dispose of the appeal, I am in accord with the learned counsel for the appellant that the entire appeal has merit and hereby allowed.

In the event, I am satisfied that the appellant has been able to show good cause to warrant this court to grant his appeal. Therefore, I set aside the decision of the District Land and Housing Tribunal in Application No.

186B of 2019. The appellant to file his appeal before the District Land and Housing Tribunal for Mwanza. No order as to the costs.

Order accordingly.

DATED at Mwanza this 21st May, 2021.


A.Z.MGEYEKWA

JUDGE

21.05.2021

Judgment delivered on 21st May, 2021 via audio teleconference whereby both parties were remotely present.




A.Z.MGEYEKWA

JUDGE

21.05.2021

Right to appeal full explained.