

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBEYA**

**MISC. LAND APPLICATION NO. 104 OF 2020**

(From the District Land and Housing Tribunal for Kyela at Kyela in Land  
Application No. 09 of 2014)

**NELSON MWANKENJA.....APPLICANT**

**VERSUS**

**MBAULA DAVID.....RESPONDENT**

**RULING**

Date of Hearing: 04/03/2021  
Date of Ruling : 19/05/2021

**MONGELLA, J.**

The applicant herein is seeking for extension of time within which to lodge an appeal out of time. He is seeking to impugn the decision of the District Land and Housing Tribunal for Kyela at Kyela rendered in Land Application No. 09 of 2014. He has filed this application under section 41(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019.

The applicant appeared in person while the respondent was represented by Mr. Ignas Ngumbi, learned advocate. The application was argued orally.



In his affidavit in support of the application as well as in his submission, the applicant advanced two main reasons in convincing this court to grant the application he is seeking. The first is on technical delay and the second is on illegality in the impugned decision.

With regard to technical delay, the applicant submitted that after the decision was rendered by the Tribunal, he filed Appeal No. 13 of 2017 in this court. However, the appeal was struck out for being incompetent. He said that his appeal was held incompetent as it was registered in the Tribunal instead of this court and was titled "petition of appeal" instead of "memorandum of appeal." Thereafter, he filed Application No. 65 of 2018 seeking for extension of time. This application was also struck out for containing a defective jurat. He was of the view that since Appeal No. 13 of 2017 was not determined on merits; he deserves to be given a chance to pursue the appeal by being granted extension of time.

With regard to the point of illegality, he simply submitted that the Tribunal decision contains illegality as it was rendered without the fully participation of the wise assessors.

In reply, Mr. Ngumbi opposed the application. He argued that the applicant has relied on technical delay, but has not accounted for the further delay of 25 days being the period between 28<sup>th</sup> August 2020 whereby the his application was struck out and 22<sup>nd</sup> September 2020 when this current application was filed. He argued that the law requires for each day of the delay to be accounted for and the applicant has not done that thus no sufficient reason has been provided.



With regard to the illegality on involvement of assessors, Mr. Ngumbi argued that this point is not a panacea of all ills in extension of time. He said that the applicant attached a copy of the Tribunal Judgment in Application No. 09 of 2014. Considering that judgment, he argued that the Hon. Chairman agreed with the opinion of the wise assessors, something which shows that the assessors were fully involved. He was of the opinion that the illegality pointed out is not apparent on face of record. He concluded by referring the court to the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015, (CAT at Arusha, unreported) in which it was ruled that not every illegality suffices to extend time. He thus prayed for the court to dismiss the application with costs.

In rejoinder, the applicant submitted that after his application was struck out he had no idea that he was supposed to file another application immediately. In short he pleaded ignorance of the law.

I have duly considered the arguments by both parties. First of all I agree with Mr. Ngumbi that the law is settled to the effect that each day of the delay has to be accounted for and thus the applicant ought to have accounted for the further delay after his application was struck out in this court. See: **Dar es Salaam City Council v. S. Group Security Co. Ltd**, Civil Application No. 234 of 2015 (CAT-DSM, unreported); **Moto Matiko Mabanga v. Ophir Energy PLC & 2 Others**, Civil Application No. 463/01 of 2017 (CAT-DSM, unreported); **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2018 (CAT-Zanzibar, unreported) and that of **Finca (T) Limited & Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (CAT-DSM, unreported).



The reason given by the applicant that he was not aware of the legal rules is not a sufficient reason as the law is settled to the effect that ignorance of the law is not a defence. See: **Thomas David Kirumbuyo and Another v. Tanzania Telecommunication Company Limited**, Civil Application No. 1 of 2005 (CAT at DSM, unreported).

On the other hand however, I wish to consider the ground of illegality advanced by the applicant in his endeavour to convince this court to grant him extension of time. The law is settled in a number of decisions that, among the reasons that may be considered sufficient in granting extension of time is the existence of illegality in the impugned decision. The question of illegality is considered regardless of other sufficient reasons advanced by the applicant. See for instance the case of **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and the Liquidator of Tri-Telecommunication (T) Ltd v. Citibank of Tanzania Limited**, Consolidated References No. 6, 7 and 8 of 2006 (unreported) in which the Court held:

*"It is settled law that, a claim of illegality of the challenged decision, constitutes sufficient reasons for extension of time...regardless of whether or not a reasonable explanation has been given by the applicant..."*

Nevertheless, a claim on illegality can only be entertained if it meets certain criteria. That is, if the illegality is apparent on face of record, is of sufficient importance and the determination of it shall not involve a long drawn process of argument. These criteria were settled by the Court of



Appeal in the case of ***Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania*** Civil Application No. 2 of 2010 (unreported). See also: ***Kalunga and Company Advocates v. National Bank of Commerce Ltd***, Civil Application No. 124 of 2005; ***Arunaben Chagan Mistry v. Naushad Mohamed Hussein & 3 Others***, Civil Application No. 6 of 2016 ***Jehangir Aziz Abubakar v. Balozi Ibrahim Abubakar & Another***, Civil Application No. 79 of 2016

The appellant raised an issue of illegality to the effect that the Tribunal assessors were not fully involved in adjudication of the matter before it as required under the law. Mr. Ngumbi argued that this illegality is not apparent on face of record as in the Tribunal judgment it is stated that the Chairman concurred with the opinion of assessors, thus signifying that the assessors were fully involved.

In my settled view, the illegality raised in this application on effective involvement of assessors meets the criteria settled in ***Lyamuya Construction*** (supra). The law as settled by the courts is to the effect that the opinion of assessors has to be filed in writing in the Tribunal and read in the presence of the parties. The participation of assessors is not only required to feature in the Tribunal judgment, but also in the proceedings. If it does not feature in the proceedings of the Tribunal the said proceedings become incurably defective. As such the judgment becomes affected as well. The courts have always considered the omission incurably fatal thus vitiating the whole proceedings and judgment. See: ***Edina Adam Kibona v. Absalom Swebe (Sheli)***, Civil Appeal No. 286 of 2017 and that of ***Tubone Mwambeta v. Mbeya City Council***, Civil Appeal No. 287 of 2017 (CAT at

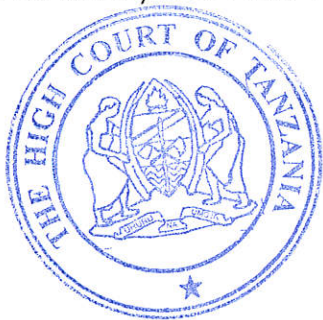


Mbeya, unreported). See also: **section 23 (1) and (2) of the Land Disputes Courts Act, Cap 216, R. E. 2019** and **Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulation, G.N. No. 174 of 2003.**

The illegality raised is therefore of sufficient importance because it is mandatorily provided under the law to the extent that non-compliance thereof vitiates the whole Tribunal proceedings. It shall also not involve a long drawn process of argument because it is an error that is apparent on face of record. The illegality cannot be rectified unless the same is tested on appeal whereby the appellate court shall have the opportunity to scrutinize the Tribunal record to satisfy itself on whether the assessors were fully involved.

In the premises, I grant the applicant's application for extension of time basing on the point of illegality in the impugned Tribunal decision. The applicant shall lodge his appeal within 21 days from the date of this ruling.

Dated at Mbeya on this 19<sup>th</sup> day of May 2021.



  
**L. M. MONGELLA**  
**JUDGE**



**Date:** 19/05/2021

**Coram:** Z.D. Laizer – Ag. DR

**Applicant:** Absent

**Respondent:** Absent

**For the Respondent:** Mr. Ignas Ngumbi, Advocate

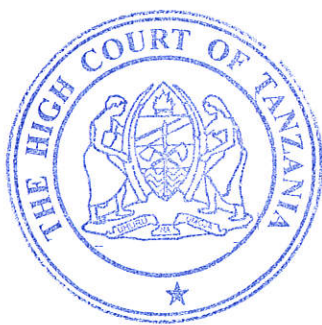
**B/C:** Mapunda

**Court:** Delivered in the presence of Mr. Ignas Ngumbi, Advocate and the applicant in person.



**Z.D. Laizer**  
**Ag. DEPUTY REGISTRAR**  
**19/05/2021**

**Order:** Right of appeal explained.



**Z.D. Laizer**  
**Ag. DEPUTY REGISTRAR**  
**19/05/2021**