

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(LAND DIVISION)

APPELLATE JURISDICTION

MISC. LAND APPLICATION NO. 20 OF 2021

(Arising from Land Appeal No. 229/2017 of the District Land and Housing Tribunal – Kigoma, before M. Nyaruka – Chairperson, Original Land Dispute No. 1/2017 of Bugaga Ward Tribunal)

JONAS NTALILIGWA APPLICANT

VERSUS

FEDIA NYAYAGARA RESPONDENT

R U L I N G

24th May & 1st June, 2021

I.C. MUGETA, J.

Two years after the District Land and Housing Tribunal of Kigoma gave its decision on 28/3/2019, the applicant intends to appeal that decision. For that reason, he has preferred this application to have time to do so extended. Under paragraph 3 of the affidavit he admits that the judgment was supplied to him in time on 4/4/2019. No reason has been advanced as to why the appeal was not filed in time. However, in paragraph 4 he advances illegalities as the major reason upon which the application should be granted. He is represented by Michael Mwangati who cited the case of the **Principal**

Mgeta

Secretary Ministry of Defence and National Service v. Devran

Valambhia, [1992] T.R.L 387 to argue that illegality is a good reason upon which orders for extension of time can be sought and granted. The alleged illegality, according to the affidavit which is somewhat not clear and the submission of learned counsel, are two. Firstly, that the Village Council was not joined as a necessary party. The learned counsel submitted that this is because the applicant in his evidence alleged to have been granted the dispute land by the said Authority. Secondly, that as the respondent alleged to have inherited the land, being not administrator of the deceased estate, he had no locus standi to be sued.

In reply, Mr. Thomas Msasa, learned counsel for the respondent, submitted that no sufficient reason has been advanced to enable the grant of the sought orders because each day of the delay has not been accounted for. On the pointed-out illegalities, he submitted that the applicant cannot complain of failure to join a necessary party and locus standi on part of the respondent while he is the one who filed the case against the respondent.

These facts raise a very important legal issue for my determination. This is whether an aggrieved party to the proceedings can relax without taking action and later at his pleasure and without assigning reasons for the delay

move the court to allow him/her extension of time to appeal for a reason that the impugned decision contains illegalities.

To start with, I agree with Mr. Mwangati that illegalities have been held to be sufficient ground upon which prayers for extension of time can be granted. However, he cited a wrong case authority. The above cited Valambhia's case did not discuss issues of extension of time. The relevant case is **Principal Secretary Ministry of Defence and National Service v. Devran Valambhia**, [1992] T.R.L 185. The parties in the two cases are the same but different issues involved. To my knowledge, this is the case that enunciated the principle of illegality as constituting a sufficient reason to grant applications for extension of time and not the one cited by Mr. Mwangati. In this case the Court of Appeal held: -

"We think that where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute "sufficient reason" within the meaning of rule 8 of the Rules for extending time".

However, it is my view that this principle is not absolute. It is not a question of alleging and pointing out the purported illegalities. The alleged illegality must be capable of being held, in the circumstances of the case, as

constituting a sufficient cause to allow the orders sought. I hold this view because in the Valambhia case (supra) while distinguishing the decision of the East African Court of Justice in the case of **The Commissioner of Transport v The Attorney-General of Uganda and Another** [1959] E.A. 329 where that Court refused to grant extension of time on ground of alleged illegality, the Court of Appeal stated: -

"In other words, the Court refused to extend time because the point of law at issue was not of sufficient importance to justify the extension. The corollary of that is that in some cases a point of law may be of sufficient importance to warrant extension of time while in others it may not".

Therefore, there are instances where the illegality principle do not work and in some cases besides illegality being the point of law at issue, the length of the delay is a relevant factor too. My conclusion is fortified by the decision in **Kalunga and Company Advocates v. National bank of Commerce Limited** [2006] T.L.R 235. In this case, a single Justice of the Court of Appeal, besides accepting that there was a serious point of law involved and after referring to the Valambhia's case, my Lord also considered the fact that the delay was only 17 days. In the case under consideration case the delay is for solid two years.

Further, in the case of **Cosmas Faustine v. The Republic**, Criminal Application No. 76/04 of 2019, Court of Appeal – Bukoba (unreported) another single Justice of the Court of Appeal had this to say: -

*"... the court can only grant an application for extension of time subject to the applicant meeting the following conditions namely; reason and length of the delay, accounting for each day of the delay, absence of negligence or sloppiness in preferring the application and, **in fitting cases, existence of an issue of illegality sufficient public importance in the impugned decision**". (emphasis supplied).*

In my view, the word fitting cases includes consideration of other factors like how diligent the applicant has been in pursuit of his/her rights. Consequently, I hold that a party who fails to exercise diligence in observance of court rules of procedures like filing an appeal in time is not protected by the illegality principle unless the court decides that the point of law raised is of public importance. A point of law of public importance does not include decisional errors. These are errors made in the decision making process on both matters of law and facts. The illegality principle envisaged in Valambhia's case, as held in **Lyamuya Construction Co. Ltd. Vs. Board of Trustees of Young Women's Christian Association of Tanzania**,

Civil Appeal No. 2/2010, Court of Appeal (unreported) was to cover errors on jurisdiction and I would add time limitation which are pure points of law. These are points of law which can be easily identified and said to be apparent on the face of the record. Other legal issues like locus standi and none joinder of necessary parties involve somewhat mixed points of law and facts. When alleged as illegalities contained in a decision, they cannot be said to be apparent on the face of the record.

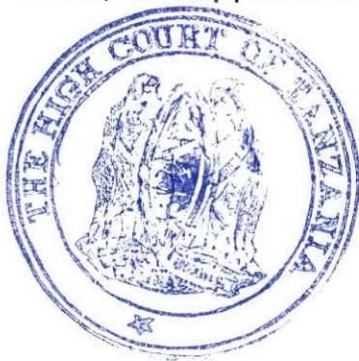
My Lord Justice Kitusi, J.A, in **Mpoki Lutenyama Mwakabuta and Another V. Jana Jonathan** (as legal representative of the late Simon Mperazoka) Civil Application No. 556/01 of 2018, Court of Appeal – Dar es Salaam (unreported) observed that ground of illegality as a reason for extension of time is not only tricky but obscure. For the sake of fairness and justice, the recondite principle ought to be redefined as from when it was anounced in the Valambhia case (supra), a lot of water has passed under the bridge. To that effect I would say that unless the point of law presented involves jurisdiction or time limitation matters, for a case to succeed on all other alleged illegalities, the applicant must prove diligence in pursuing his rights and accounting for each day of the delay.

Back to our case. In all the Court of Appeal cases referred to above, the Court considered facts of each case in light of rule 8, now rule 10 of the Court of Appeal Rules which is somewhat worded like section 38(1) of the Land Disputes Courts Act [Cap. 216 R.E 2019] under which this application is made, hence, the stated principles apply to this case. Now I have to decide if this is a fit case to grant the prayers sought on ground of illegalities in the impugned judgment.

As I have said the alleged illegalities are about locus standi and none joinder of a party. In my considered view, these are not jurisdictional errors. Mr. Mwangati submitted that the issue of land being granted to the applicant by the Village Council is in the evidence of the applicant and evidence that the respondent inherited the land is in the respondent's evidence. Therefore, in order to establish existence of those errors, one must review the whole evidence. Such a process would involve long drawn argument and as it was held in **Lyamuya Construction Case** (Supra), such points of law are not part of the illegality point envisaged by the principle in Valambhia's case. Mr. Msasa, submitted that it is the applicant who filed the case, therefore, he is least expect to complain, after losing the case, that he filed a case against a party without locus standi and without including a necessary party. I agree with him. It was upon the applicant to implead the right parties. He cannot,

thereafter, claim that he sued a party without locus standi and that he did not join a necessary party. On locus standi, if the respondent, indeed, inherited the land then he intermeddled with that land and can be sued on his own right. Further, if a necessary party was not joined, this did not affect the determination of the rights of the parties to the suit unless the applicant stated how that fact occasioned failure of justice on his part. In the circumstances, the alleged illegalities in this case, I hold, do not raise any point of general public importance to constitute a sufficient cause upon which this application can be granted.

In the event, the application is dismissed with costs.




I.C. Mugeta

Judge

1/6/2021

Court: Ruling delivered in chambers in the absence of the applicant and in the presence of the respondent represented by Mr. Thomas Msasa, advocate.

I.C. Mugeta

Judge

5/2021